

THE BENGAL  
LOCAL SELF-GOVERNMENT ACT.



THE BENGAL  
LOCAL SELF-GOVERNMENT ACT

(B.C. ACT III OF 1885).

AND

*THE GENERAL RULES FRAMED THEREUNDER*

EDITED BY

WITH CRITICAL AND ~~EXPLANATORY~~ NOTES, APPENDIX,  
AND A COPIOUS INDEX,

BY

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EDITOR OF "THE BENGAL MUNICIPAL MANUAL

*SECOND EDITION.*

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## PREFACE TO THE SECOND EDITION.

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THE present edition does not differ materially from the preceding one, except in containing Part IX of the Rules issued under the Act and the amendments made in the Bengal Vaccination Act by B.C. Act II of 1887. Part IX of the Rules had not been issued when the first edition was printed.

The alterations notified from time to time in the Rules have been inserted, and the principal circular orders issued by the Bengal Government under the Act have been added to the Notes. The Notes have all been revised, and some alterations in them have been made.

The Rules have been all interleaved with blank pages in the present edition, an obviously convenient arrangement, as they are liable to alteration from time to time. The model Rules under section thirty-two can now be conveniently corrected so as to shew the Rules which have been locally adopted under that section. They have been retained in the present edition, partly on this account, and partly because it is understood that many of the Local Boards have yet to frame rules.

F. R. S. C.

RUNGPORE, *June*, 1888.



## PREFACE TO THE FIRST EDITION.

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THE introduction of a scheme of Local Self-Government into Bengal has given rise to much controversy, and to the expression of many contradictory opinions.

There are persons who maintain that any such system is entirely inapplicable to the conditions existing in the country: that to give the people any voice or share in the administration can only end in confusion and disaster; and that the only form of government which they can understand and appreciate is a benevolent despotism.

The answer to these critics is an obvious one. We are already committed to an opposite course, and it is now far too late to take our hand from the plough and to look back. The grant to the people of some sort of representative institutions, of some measure of Local Self-Government, is merely the natural and logical sequence of the system under which we have been educating them ever since Lord William Bentinck decided that "the great object of the British Government ought to be the promotion of European literature and science among the natives of India." If we had all along intended to govern them on Oriental principles, we should have educated them on Oriental principles, and not according to the Western school of thought. It is our policy which has created and fostered their political aspirations,

and has encouraged them to demand a voice in the administration of their country. They have merely

"Retought the lessons *we* have taught."

Had we wished them to remain content with the existing order of things, it surely would have been the height of folly on our part to have educated them in a literature breathing the true spirit of progress, and to have taught them the history of—

"A land of just and old renown  
Where Freedom slowly broadens down  
From precedent to precedent."

To cause one set of political principles to be taught in the lecture-room, and to ask the people to accept another set as the practical basis of administration, is on the face of it absurd and inconsistent. The education which we have given the people has no object, and no justification, unless it is intended to encourage them in an attempt to raise themselves in the scale of civilization, by both political and moral progress. Unless, therefore, we are prepared to admit that our whole educational policy in the past has been a mistake, we can hardly now with any regard to consistency regret that

"Statesmen at Her Council met  
Who knew the seasons when to take  
Occasion by the hand, and make  
The bounds of freedom wider yet."

There can be no reasonable question that we are committed to a policy of giving the educated class a gradually increasing share in the administration of the country. The considerations which limit the application of this principle are obvious. There are other classes besides the educated class; and their interests have also to be considered. If there is one class more than another, whose interests the Indian

administrator is bound to consider, it is the labouring and cultivating class, constituting the vast majority of the inhabitants of the country. The educated portion of the population can and do make themselves heard. It is the millions who are dumb and helpless. In introducing any changes in the administration of the country, the greatest care must be taken that their interests do not suffer. In delegating, therefore, any portion of the powers and responsibilities of Government to selected bodies of the educated minority, nothing can be more certain and more obvious than that we are bound to take precautions against any falling off in the general efficiency of administration, as such falling off necessarily implies hardship to the millions who have, unfortunately, quite enough hardships at any time. We are also clearly bound for the same reason to reserve certain powers of control, in order that when things are going wrong, we can put them right, or prevent them getting any worse. Nothing can surely be more absurd than to argue, as some writers have done, that the ruling power in the State can rightly divest itself of any of its responsibilities in regard to a certain portion of its subjects, and hand over their interests irrevocably, and without any reservations as to control, to another body of its subjects. And for what? In order that the latter may make experiments in the art of government! *Fiat experimentum in corpore vili.* This is the system which Mr. Cotton advocates in his "New India." To me it seems neither better nor worse than the application of the principle of vivisection to administration. In justice to the advocates of vivisection, it must be admitted, that *they* never demanded that the human race should furnish them with subjects for experiment.

Lest I should be supposed to misrepresent Mr.

Cotton's views, I will here quote the passages in his work to which I refer. "The principle of local self-government ought to be extended in India gradually to selected localities first, and afterwards to others, *but in all cases with perfect confidence and in an ungrudging spirit.* To enforce the principle wholesale in all places, and then to impose on it close and intolerable restrictions, is to ensure its failure. It will be hopeless to expect any real development of local self-government if local bodies are subjected to check and interference in matters of detail" (p. 58). And again:—"Freedom from official tutelage is now essential to the healthy and independent growth of the Indian people" (p. 59). The italics are mine.

You are, it seems, to hand over the subjects for experiment with perfect confidence. It might not be amiss, perhaps, to ascertain that they felt perfect confidence. But supposing that you do not happen to feel any such confidence, how are you to set about getting it? If your mind is so constituted that you cannot feel confident that a body of men without any previous administrative training or experience, to whom new and important administrative duties are suddenly confided, will not, for at all events some time, require official assistance, advice, and control, what are you to do? The answer seems clearly to be that you have no alternative but to afford such official assistance, advice, and control.

The injunction as to perfect confidence is either superfluous or futile. If you have such confidence, it is superfluous; if you have not, it is futile. It either means nothing at all, or else that you should in all cases simulate such confidence, whether you feel it or not.

If, indeed, what is intended to be suggested is, that no opportunities for obtaining any practical know-

ledge of local self-government should be afforded to the inhabitants of any locality, until perfect confidence in their capacity for local self-government of the most unrestricted kind can reasonably be entertained, the suggestion seems to indicate very much the same confusion of ideas as was shewn by the individual who remarked, after a narrow escape from drowning, that nothing should induce him to enter the water again until he had learnt to swim. Government, it is suggested, should not allow its subjects to go into the water at all, until it can feel perfect confidence in their knowledge of swimming.

You are also to hand over the subjects for experiment "in an ungrudging spirit." There should be no difficulty whatever about this, as it is easy to be generous at the expense of others.

If "freedom from official tutelage is now essential to the healthy and independent growth of the Indian people," it is surely a very strange and remarkable circumstance that, with hardly any exception, the only places in which evidences of such growth have been made manifest, are where officials have taken the greatest pains to foster and encourage it. I may instance the Serampore Subdivision as an example very much to the point. This hardly looks as if official influence must necessarily be a deadly upas tree, under the malignant shade of which the sapling of popular progress must wither and die.

The proposition appears to be one of those half truths which are more mischievous, because more likely to mislead, than whole errors. It is true that when the growth in question has arrived at a certain stage, immediate official tutelage is more likely to do harm than good; and all that is required is a general control in matters of special importance. But such a stage of progress has only been reached

by the people of Bengal in a certain number of towns; and in these places such direct and immediate official tutelage has been entirely withdrawn. The amount of control to which Municipal Corporations in such places are now subject, is not on the whole greater than that which is brought to bear upon similar bodies in England. The only difference consists in the nature of the authorities by which the control is exercised. In England it is exercised partly by the Local Government Board, the Lords of the Treasury, and the Secretary of State; and partly by the Courts of Queen's Bench and Chancery. Municipal Commissioners in Bengal, fortunately for their peace of mind, know nothing about writs of *certiorari*, writs of *mandamus*, and *quo warranto* informations. In Bengal the control is vested entirely in the Executive. If it be urged that judicial control is necessarily less irksome than executive, the answer is that it would be impossible to apply the English system to the poor Municipalities of Bengal. If the expenditure of the Municipal Fund on any particular purpose could only be called in question by a writ of *certiorari* in the High Court, half the Municipalities in the Province would soon be bankrupt from the expenses of litigation.

It is also true that official control is injurious, if it attempts to do too much. If it allows no freedom of expression or action: if it resents all opposition as a personal injury: if it strives to do everything itself, instead of encouraging the first beginnings of self-help and self-reliance, it clearly exercises a baneful influence upon the healthy and independent growth in question. But if it endeavours to persuade rather than to coerce, to lead rather than to drive, to encourage rather than to rebuke, and above all not to interfere authoritatively, *nisi nodus vindice dignus*,



must it necessarily be such a very bad thing? I venture to think not.

As already remarked, it appears to be beyond question, that while we ought to endeavour to satisfy as far as practicable the aspirations of the educated classes, it is clearly our duty to take precautions that in doing so the general efficiency of the administration of the country shall not be impaired, or what practically comes to the same thing, that the interests of the great body of the people shall not suffer. Now the present measure appears to me to be calculated to fulfil both of these conditions. It endeavours to unite *res olim dissociabiles, potestatem et libertatem*. It gives on the one hand to the newly-constituted Boards considerable powers, important responsibilities, and great freedom of action as long as those powers are not abused, and those responsibilities are recognized. On the other hand, it gives the executive officers of Government sufficient powers of general control, and the right to interfere when such interference is absolutely necessary in the public interests. It appears to me to be reasonable to hope and to expect that, under such a system, not only will there be no loss, but a considerable gain in administrative efficiency. For some valuable remarks on the practical objects of the present scheme, and the spirit in which it ought to be worked, I will quote the following extracts from a circular published in the *Central Provinces Gazette* on the 7th April 1883 :—

“One great object of the measure is to secure more efficient and economical administration of the District Funds : to utilise power hitherto only very rarely and very little used. Our educational system and the general influence of a sound and settled administration have produced a considerable number of men of enlightenment and ability. Many of them have a

large amount of leisure time which they would be quite willing to occupy with any honourable employment. It is sheer waste not to utilise the services of such men.

“It is quite impossible for a Deputy Commissioner to undertake himself all the work of his district. The Chief Commissioner has never been able to regard that officer as the most efficient who has tried to retain everything in his own hands. To be able to supervise the work of others, to have reasonable trust in subordinates and fellow-labourers, and so to avail himself of assistance from all proper quarters, is one of the first requisites in a really efficient district administrator. One of the objects of the measure under discussion is to extend this principle, and to utilise available power.

“Among the difficulties which a conscientious Deputy Commissioner must most frequently realise are the impossibility of supervising works which are being carried on in all parts of the district, and the want of accurate knowledge of the real requirements of different localities. It is one of the objects of this measure to supply him with an agency endowed with local knowledge and capable of exercising efficient supervision. The requirements of their own area will be known to the Members of the Local Boards and District Councils, and Committees composed of members resident in the locality where works are going on will be able to supervise them.

“Another defect of the present system is the want of consistency of plan which has often characterised district works. One Deputy Commissioner has theories and projects of his own, and expends money freely on them, only too often to find that when he leaves the district, his successor has good reasons to adduce for abandoning them. It is one of the objects of this

measure to place a permanent authority in charge of local works, and so secure consistency of administration.

“It is not intended to set aside District officers. Their powers of control are very full and effectual. Anything like deliberate neglect of duty or malversation of public money can be checked at once. District officers have full power of obtaining information and inspecting works ; and they will be expected to use that power, to keep themselves thoroughly acquainted with the working of their District Councils and Local Boards, and to see that apathy and malpractices are not tolerated to the prejudice of the public.

“It is not indeed intended that there should be vexatious interference with, or factious complaints against, the Councils and Boards. No loyal and efficient work will be got out of them by such treatment. But kindly advice and assistance will be of the highest value ; and rebuke or the harsher measures provided for in the Act ought only to be resorted to under the pressure of grave necessity. Every little mistake must not be made the subject of easy invective or the excuse of wanton supersession. Mistakes have occurred under the old system, and will occur under any system. The lonely bridges that one sometimes meets with, left with no road near them, the expensive roads but little used in the traffic of the country, the miles of avenues mentioned in arboriculture reports written even while the last vestige of the trees was fading away ; these are some instances of the waste of public money which has troubled many an earnest officer under the old system. And there will no doubt be mistakes under the new. It will be the duty of every District officer to see that these are as few as possible ; but it will be not less his duty to deal with such cases consi-

derately and kindly. Such errors of judgment must be obviated as far as possible; but the proper means of obviating them is kind and friendly advice, not that harsh treatment which should be reserved for deliberate malpractices.

"It seems to the Chief Commissioner that some have misunderstood the object of this measure. They have believed that it is intended to separate the people from the District officers, to render the people independent of the District officers, and to remove responsibility from the latter in an important part of district administration. The Chief Commissioner would never have lent his countenance to such a measure. The object of the measure which he has promoted is the very reverse. It is to bind the people and the District officers more closely together, to yoke them together as fellow-workers in the administration of the district. The responsibility of the Deputy Commissioner for the administration of his district can never cease; but neither can he perform every part of the work with his own hand. Fellow-labourers are, therefore, provided for him, whose work he will supervise and generally control. The Chief Commissioner is persuaded that it will be the Deputy Commissioner's own fault if these are not found loyal fellow-workers.

"Surely no Deputy Commissioner would willingly assert that he cannot find a few dozen competent and trustworthy men in his district; and he cannot be an efficient administrator who would fail to utilise the services of such men."

I do not think that any apology is necessary for quoting the above remarks at length. Nor will I venture to add anything to them.

A few words about the present little work. I have endeavoured to make it as complete as possible by

including in it all the Acts and Rules to which members of Boards are likely to want to refer in the performance of their duties. The Rules under the Local Self-Government Act have been, with few exceptions, either drafted in the first instance, or subsequently revised by me. I have, therefore, had occasion to study the whole subject with some care, though with what success, is a question upon which the reader must form his own opinion.

F. R. S. C.

DARJEELING, *September*, 1886.



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*Schedule III* — Names of districts in every sub-division of which a Local Board shall be established.



# ACT No. III OF 1885.

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## *An Act to extend the System of Local Self-Government in Bengal.*

**Preamble.** WHEREAS it is expedient to extend the system of Local Self - Government within the territories subject to the Government of the Lieutenant - Governor of Bengal: It is enacted as follows :—

### PRELIMINARY.

**Short Title.** 1. This Act may be called “The Bengal Local Self-Government Act of 1885.”

**Extent.** It shall extend to all the territories subject to the Lieutenant-Governor of Bengal which are not included within the limits of the town of Calcutta, or of the districts of Singhbhum, the Sonthal Pergunnahs, or the Chittagong Hill Tracts, or of any place or town to which the provisions of the Bengal Municipal Act, 1884, have been, or may hereafter be, extended :

**Commencement.** And it shall come into force in any district, on such date as the Lieutenant-Governor may, by notification, direct.

Any notification, order, or rule, and any appointment to an office, may be made, or election held, under this Act after it shall have received the assent of the Governor-General, and shall take effect in any district on this Act coming into force therein.

2. On this Act coming into force in any district, the enactment specified in the first and second Schedules shall, as regards such district, be repealed to the extent mentioned in the third column of the first Schedule, and be amended to the extent mentioned in the third column of the second Schedule.

But this repeal shall not revive any office, authority, or thing abolished by such enactment, or affect the validity of anything which has been done or suffered, or any right, title, obligation, or liability which has accrued before the commencement of this Act.

The enactment referred to is the Cess Act, 1880. Sections 110 to 181 both inclusive, and certain clauses of section 182, have been repealed. The provisions relating to the constitution, powers, and mode of carrying on business of the District Road Committees have been repealed as being superseded by the present Act.

3. Every person holding office in any district under the repealed provisions of the Cess Act, 1880, shall continue to hold such office until it shall be abolished, or a new appointment made in respect thereof, by the District Board established in such district under the provisions of this Act:

Office held under repealed provisions of Bengal Act IX of 1880 to continue in existence until its abolition or confirmation by District Boards.

Provided that, if for a period of twelve months from the date on which this Act comes into force in any district, the District Board does not abolish such office or make such appointment as aforesaid, the person holding such office shall be deemed to have been appointed to it under the provisions of this Act:

Provided further, that if such office shall be abolished or a new appointment made in respect thereof, compensation pension or gratuity shall be paid from the District Fund to any person not being a servant of the Government who may be deprived of such office, and the amount of such pension or gratuity shall be calculated in accordance with any rules made under the provisions of section one hundred and thirty-eight of the Cess Act, 1880; or if no such rules have been made, the amount shall be calculated in accordance with the rules regulating the payment

of compensation pensions and gratuities to Uncovenanted servants of the Government.

By section 138 (now repealed, see Schedule I) of the Cess Act, the District Committee was authorized, subject to the approval of the Lieutenant-Governor, to make rules for pensions and gratuities payable to their officers and servants.

With reference to the second proviso the following important remarks were made by the Honorable Colonel Trevor when moving its addition to the section :—

"The object of the amendment was obvious on the face of it, namely, to provide for the payment of pension or gratuity by way of compensation for loss of appointment to any of the employes of the Road Cess Committees whose appointments might be abolished, or whose services might be dispensed with, under the operation of the new Local Self-Government Bill. He thought Honorable Members would admit that it was only fair and in accordance with the custom of the Government service that men should receive compensation when they were deprived of their means of livelihood without any fault of their own, and he imagined it was only by oversight that some provision of this nature was omitted from the original Bill.

"The amendment which he was moving to introduce would, he trusted, have another effect besides providing for the payment of compensation to men who were deprived of their appointments. He trusted it would have the effect of making District Boards weigh carefully whether any man's discharge was really necessary under this Act—that it would make them reflect before burdening the District Fund with the payment of gratuities. He hoped when this Act came into force it would have the effect of giving something like permanence to the establishments of District Boards. Hitherto these Local Fund establishments, under the Road Cess Committees, had been in a very unsettled condition. They had had, as it were, a sword hanging over them for the last five years. The last Cess Act was passed in 1880, and section 132 of that Act provided that all the District Engineers appointed before it was passed should be required to vacate their appointments two years after the passing of the Act,—i.e., on the 1st October 1882; but that they should be eligible for re-appointment. Therefore, all through those two years these gentlemen had lived in dread of being turned out of their appointments. Before those two years expired, the new Local Self-Government scheme was started, so, when the 1st October 1882 arrived, instead of being finally discharged or permanently re-appointed according to the intention of the Cess Act, it was deemed expedient to re-appoint them provisionally and as a temporary measure, subject to any change in the constitution of the office of District Engineer which might be decided on under the Local Self-Government scheme. He would read to the Council the circular which was issued at the time :—

"With reference to the circular from this office on the subject of the re-appointment of District Engineers in those cases in which the office would become vacant on the 1st October next under the provisions of section 132 of Act IX of 1880, I am directed to inform you that it is not improbable that some change will be made in the constitution of District Road Cess Committees by the legislation that will have to be adopted with reference to the Local Self-Government scheme now under consideration, and the Lieutenant-Governor therefore sanctions the re-appointment of the gentlemen named below, only as a temporary measure,

subject to any change in the constitution of the office of Engineer that may be decided on.'

"He might remind the Council that when the Local Self-Government Bill was originally introduced, it was in contemplation to abolish District Boards, and to make Local Boards the administrative authorities; therefore at that time it seemed probable that the office of District Engineer would be abolished altogether. The present Bill, however, provided for a District Board and for District Engineers, and there was no reason why most of the present District Engineers should not be retained in their appointments. At the same time he recognized the expediency of giving the new District Boards that were to be constituted under this Act the option of retaining the old men or appointing new. And so long as due care and discrimination were shown in the exercise of this option, and compensation was given to men whose services were dispensed with, he did not think there should be any reasonable grounds for complaint against the operation of the Bill.

"He had had a statement prepared showing the strength of the Road Cess establishment, and he found the number of men employed to be 222. Of these 16 were Government servants, viz.—10 District Engineers and 6 subordinates, 4 were Government pensioners, viz., 3 District Engineers and 1 subordinate, and the remaining 202 were persons unconnected with Government. Of the latter, 29 were District Engineers, 137 were subordinates, and 36 were accountants. Now, he ventured to hope that the great bulk of this large establishment would be re-employed by the new District Boards. They had been working well and gaining experience, and it would be difficult to replace them. But there would be some few men, no doubt whose services would be dispensed with, and they ought to be compensated. He found that none of the men had served so long as 15 years, which was the minimum service to entitle them to pension. They would, therefore, only be able to claim gratuity at the rate of a month's pay for every year's service. His reason for introducing into the wording of the amendment the expression 'compensation pensions or gratuities' was that that was a sort of technical term used in the Civil Pension Code." *April 15th, 1886.*

Act not to come into force in cantonments without sanction of Governor-General in Council.

Interpretation.

"Commissioner."

"Local authority"

"Local authority."

constituted under this Act.

4. Notwithstanding anything in section one, this Act shall not come into force in any cantonment without the sanction of the Governor-General in Council previously obtained.

5. In this Act, unless there be something repugnant in the subject or context—

"Commissioner" means the Commissioner of a division.

"Local authority" means any District Board or Local Board, Joint Committee, Union Committee, or Joint Union Committee

“Municipal authority” means the Commissioners of a Municipality constituted under the provisions of the Bengal Municipal Act, 1884.

“Notification.” “Notification” means a notification published in the *Calcutta Gazette*.

“Magistrate of the district” includes any Magistrate subordinate to the Magistrate of the district, to whom he may delegate all or any of his powers under this Act.

The term “salaried servant of Government” does not include a retired servant of Government in receipt of a pension.

“Financial year.” “Financial Year” means the year commencing on the first day of April.

“Cess year.” “Cess Year” means the year as fixed by the Lieutenant-Governor under the Cess Act of 1880.

By section 11 of the Cess Act, the Lieutenant-Governor is empowered to fix the Cess Year from time to time. By notification of the 25th June 1872, the Cess Year was ordered to commence on the 1st of October. By notification of the 29th November 1886, it was directed that in sixteen districts specified, the Cess Year shall run from the 1st of April instead of the 1st October. By notification of the 29th March 1887, a similar change of date was made for the remaining districts. The Cess Year therefore now runs from the 1st April everywhere.

## PART I.

### *Local Authorities.*

## CHAPTER I.

### DISTRICT BOARDS AND LOCAL BOARDS.

#### *Constitution of District Boards and Local Boards.*

6. The Lieutenant-Governor shall, by notification, establish a District Board for every district.

The Lieutenant-Governor may, by notification, establish a Local Board in any sub-division or in any two or more sub-divisions combined, and may cancel or vary any such notification:

Provided that a Local Board shall be established in every sub-division of every district mentioned in the third Sche-

dule of this Act, and in any other sub-division to which the provisions of the next succeeding Chapter shall have been extended.

A District Board shall have authority, for the purposes of this Act, over the district for which it is established, and a Local Board shall have authority over such sub-division or sub-divisions as the Lieutenant-Governor may, by notification, direct.

By section 14, the list of districts given in the third Schedule is not a final one, as it may be added to from time to time.

By section 1, the Act shall not extend to any place or town to which the provisions of the Bengal Municipal Act have been or may be extended. The District and Local Boards will, therefore, have no authority over municipalities. By section 4, the Act shall not come into force in any cantonment without the sanction of the Governor-General in Council, and in the absence of such sanction, it is obvious that District and Local Boards will have no authority within the area of cantonments.

7. A District Board shall consist of such number of members, not being less than nine, as the Lieutenant-Governor may, by notification, fix in this behalf, and may include elected and appointed members :

Constitution of District Boards.

Provided that if there be no Local Board within a district, the whole of the District Board shall consist of appointed members.

When a Local Board has been established in any district, such Local Board shall be entitled to elect such proportion of the whole of the District Board as the Lieutenant-Governor shall from time to time direct :

Provided that when Local Boards have been established throughout the whole area of any district, not less than one-half of the whole District Board (exclusive of the Chairman, if appointed under section twenty-two) shall be elected by such Local Boards :

Provided also that no person shall be elected a member of the District Board unless he be qualified for election as a member of some Local Board in the district under the provisions of section thirteen of this Act.

The appointed members (if any) shall be—

such persons and officials as the Lieutenant-Governor shall from time to time, either by name or by official designation, appoint :



Provided that not more than one-half of the appointed members shall be salaried servants of the Government.

It appears to be obvious that an appointed member of a Local Board cannot be elected to the District Board unless he is qualified under section thirteen

By section 5, the term "salaried servant of the Government" does not include a retired servant of Government in receipt of a pension.

The minimum of nine has been fixed with reference to backward districts, and will, probably, be considerably raised in advanced places *P. C., April 15th, 1885.*

8. A Local Board shall consist of such number of members, not being less than six, as the Lieutenant-Governor may, by notification, fix in this behalf.

This minimum has also apparently been fixed with reference to backward districts, and where possible will, no doubt, be considerably raised.

9. Two-thirds of the members of each Local Board established in a district mentioned in the third Schedule of this Act shall be elected under such rules, consistent with this Act, as the Lieutenant-Governor may make for each Local Board in respect of the qualifications required to entitle any person to vote for a candidate for election, and in respect of the time and mode of election:

Provided that every male person, of the full age of twenty-one years, resident within the area under the authority of a Local Board, who is qualified in one of the manners following, that is to say—

Qualification of electors. (1) Is a member of a Union Committee within such area;

(2) Has, during the year immediately preceding such election,

(a) paid a sum of not less than one rupee on account of road cess in respect of land situated either wholly or in part within such area;

(b) paid license-tax in respect of a trade, dealing or industry carried on within such area; or

(c) been possessed of a clear annual income from any source of not less than two hundred and forty rupees.

- (3) Being a member of a joint undivided family, one of the members of which is qualified for election as in this section hereinbefore provided, is a graduate or licentiate of any University, or holds a certificate as a pleader or mookhtear :

shall be entitled to vote at an election of members of such Local Board.

By section 138. clause (a), the Lieutenant-Governor is directly empowered to make such rules. The rules will be found *post*.

The qualification laid down in clauses (2) and (3) is, of course, a maximum, and the Local Government can reduce it at pleasure.

*Resident within the area*—The term "resident" must here be understood in its legal, and not in its ordinary, acceptation. The legal meaning of the terms "residence," "dwelling," "domicile," and "home," all of which appear to be synonymous in law, is discussed at some length in *Gopal Chunder Sirkar v. Kunadhar Mookher and others*, 349, C. B. 7 W.R., from the judgment in which the following extracts may be quoted—

'Now the word 'dwelling' is synonymous with the term 'place of abode' or 'residence.' It is the place where a man lives, and which he considers his home. A dwelling is constituted by an actual occupancy coupled with an intention to give the character of permanency to such occupancy. 'Residence,' said Park, B., 'means a domicile or home.' *Lamb v. Smith*, 15, L. J., 207, Exchequer

"A man's dwelling is *prima facie* the place where his wife and family reside, and if he has a family dwelling in some place, and he occupy a house and occasionally sleep in another, he will not be a resident in the latter place, for his residence is his domicile, and his domicile is his home, and his home where his family reside (Story's Conflict of Laws, 63, *R. v. The Duke of Richmond*, 6 T. R., 561), and where a man had a shop and private parlour in which he carried on his business and entertained his friends, but neither himself or his servants slept there, the Judges held that such occupation did not constitute a dwelling (*R. v. Martin*, R. and B., 108). A man may have two dwelling places at the same time. Thus it was held by the Judges that, when a man has two houses and servants in both, and lives sometimes in one and sometimes in the other, both will be his dwelling-houses, (C. Rep., 389), and during his temporary absence, each house, although empty, if there be the *animus revertendi*, will yet be his dwelling-house (*Rea v. Murray*, 2 East P. C., 496).

"So also in the case of *Whithorne, Appellant, v. Thomas, Respondent* (7 Man. and Gr., 5), where the question was as to the meaning of the word 'residence' in the Reform Act, Earle, J., said—'The fact of sleeping in a place by no means constitutes a residence, though, on the other hand, it may not be necessary for the purpose of constituting a residence in a place to sleep there at all. If a man's family are living in a borough, and he is absent for six months, but with the intention of returning there, he will still be considered as residing there.'

See also *Kashi Nath Koor v. Deb Kristo Ramanoj Dass and others*, 240, C. B., 16 W. R.; *Fatima Begum v. Sakina Begum and another*, I. L. R., 1 All., 51.

On the other hand it has been held, that where a person is regularly employed in service in one place, and his family reside in another place,

to which he has no immediate or definite intention of returning, he may correctly be said to reside or dwell at the former place—*Pargash Parag v. Hachum Khansumali*, 117, C. R., 7 W. R. In such a case, for the purposes of this section it would probably be correct to consider such a person a resident of both places.

*Joint undivided family*—It may be noticed that the term "family," and not "Hindu family," is used. It would seem, therefore, that the application of clause (2) is not restricted to Hindu families, and that it has no reference to the technical meaning of "joint undivided family" in Hindu law. If the members of the family live together and have their expenses in common, the clause would seem to be applicable, whether they are Hindus or not.

*Year immediately preceding such election*—The twelve months immediately preceding the election are evidently referred to here. "Financial Year" and "Cess Year" are defined in the Act, but not "Year."

By section 1, the Act will not extend to any municipality, and by section 4, it cannot come into force in any cantonment without the sanction of the Governor-General in Council. It follows that a municipality, or in the absence of the sanction referred to, a cantonment, cannot form part of the area under the authority of a Local Board. Residence in such a municipality or cantonment cannot, therefore, confer a qualification to vote at an election of members of a Local Board.

10. If within the time prescribed by the rules under the last preceding section, the said Lieutenant-Governor may appoint remaining members, if full proportion not elected within the prescribed time, the Lieutenant-Governor may appoint the remainder.

The rules will be found *post*.

11. One-third of the members of each Local Board established in a district mentioned in the third Schedule of this Act shall be appointed by the Lieutenant-Governor immediately after the result of the election mentioned in section nine shall have been notified to him, and such appointment shall be deemed to have been made on the date on which such election takes place.

By section 14, the third Schedule may be added to by notification from time to time.

12. In cases where the whole number of members is not evenly divisible by two or by three, the one-half or one-third, as the case may be, shall be ascertained by taking the number next below the whole number which is evenly divisible by two or by three, as the number to be divided.

13. The Lieutenant-Governor shall make rules, consistent with this Act, defining the qualifications of candidates for election as members of each Local Board established in a district mentioned in the third Schedule of this Act :

Qualification for election as members to Local Boards established in districts mentioned in Schedule.

Provided that every male person, of the full age of twenty-one years, who is qualified in one of the manners following, that is to say—

- (1) Is a member of a Union Committee within the area under the authority of such Local Board.
- (2) Has, during the year immediately preceding such election, had his fixed place of abode within the area under the authority of such Local Board, and
  - (a) paid a sum of not less than five rupees on account of road cess in respect of land situated, either wholly or in part, within the area under the authority of such Local Board ;
  - (b) paid a license-tax of not less than twenty rupees in respect of a trade, dealing or industry, carried on within the area under the authority of such Local Board ; or
  - (c) been possessed of a clear annual income from any source of not less than one thousand rupees.
- (3) Being a member of a joint undivided family, one of the members of which is qualified for election under clause (1) or clause (2) (a) or (b) of this proviso, is a graduate or licentiate of any University, or holds a certificate as a pleader or mookhtar :

shall be deemed to be qualified for election as a member of such Local Board.

By clause (a), section 138, a power of making general rules for the election of Boards and Committees is given. By the first clause of this section, a power of making special rules for each Local Board is conferred.

*Fixed place of abode*—It does not appear that any distinction can be drawn between “a fixed place of abode” and a “residence” in law. The note to section 9 may, therefore, be referred to on the subject.

*Joint undivided family*.—See notes to section 9.

*Year immediately preceding such election*.—This evidently means the twelve months before the election. “Financial Year” and “Coss Year” are defined in the Act, but not “Year.”

By the first section of the Act it does not extend to any municipality, and by section 4, it cannot come into force into any cantonment without the sanction of the Governor-General in Council. It follows that a municipality, and in the absence of the sanction referred to, a cantonment, cannot form part of the area under the authority of a Local Board. Residents in such municipalities or cantonments cannot therefore, be qualified for election under this section. Compare note to section 9.

14. It shall be lawful for the Lieutenant-Governor, by notification from time to time, to add the name of any district to the list included in the third Schedule of this Act.

Lieutenant-Governor may add names of districts, not already included, to Schedule.

From and after the date of such notification, such district shall, for the purposes of this Act, be deemed to be a district mentioned in such schedule.

15. The members of a Local Board established in a district not mentioned in the third Schedule of this Act, shall be appointed by the Lieutenant-Governor, either by name or by official designation :

Constitution of Local Boards in districts not mentioned in Schedule.

Provided that not more than one-half of the whole number shall be salaried servants of the Government :

Provided further that the Lieutenant-Governor may, at any time in regard to any Local Board, direct that two-thirds of the members of such Local Board shall be elected under the provisions of sections nine, ten, and thirteen, and that one-third shall be appointed under the provisions of section eleven.

By section 5, the term "salaried servant of the Government" does not include a retired servant of the Government in receipt of a pension.

The first proviso only applies to the case specified in the first para., that is to say, when all the members are appointed. The following extract from the Proceedings of the Council may be quoted :—

"The HON. MR. MACAULAY moved that the following proviso be inserted after the proviso contained in section 15:—

"Provided that the Lieutenant-Governor may, at any time in regard to any Local Board, direct that two-thirds of the members of such Board shall be elected under the provisions of sections nine, ten, and thirteen, and that one-third shall be appointed under the provisions of section eleven."

"He said, it was intended that the proportion of one-half Government servants should only apply to cases where all the members of the Local Board were appointed. This amendment was proposed after consideration by the Lieutenant-Governor, and if it was adopted, it would do away with a great deal of difficulty in regard to the scheduled districts. Some districts had been omitted from that schedule, because, as all the

Local Boards would hold together, the Lieutenant-Governor would be compelled to give the elective franchise to all the Boards in a remote district if he gave it to any; other districts had been included, although one or two sub-divisions in them were not so advanced as the others. The effect of the amendment would be, that whenever the Lieutenant-Governor was satisfied that any sub-division of a district was fitted for the exercise of the elective franchise, he might bestow the privilege on that sub-division without waiting until the whole district was prepared for it." *April 15th, 1885.*

16. A member of a District Board or Local Board, when appointed by official designation, shall, unless and until the Lieutenant-Governor otherwise directs, continue to be a member of the Board while he continues to hold the office to which such designation refers.

Term of office of members of District Board and Local Board.

The term of office of all other members of a District Board or a Local Board shall be fixed by the Lieutenant-Governor by rules made under this Act, which may provide for the retirement of members by rotation.

An outgoing member, if otherwise qualified, may be re-elected or re-appointed.

Taken with merely verbal alterations from the Punjab District Boards Act (Act XX of 1883), section 12.

By section 138, clause (a), direct authority is given for the making of rules of the kind referred to. The rules in force will be found *post.*

17. A member of a District Board or Local Board may resign by notifying in writing his intention to do so, in the case of a member of a District Board to the Lieutenant-Governor, and in the case of a member of a Local Board to the Commissioner, and on such resignation being accepted by the Lieutenant-Governor or Commissioner, respectively, the member shall be deemed to have vacated his office, and shall not be re-elected until the expiration of the term for which he would have held the office but for his resignation.

Resignation of members.

By section 138, clause (f), the Lieutenant-Governor is empowered to make rules determining the immediate offices, if any, through which correspondence between members of Boards and the Lieutenant-Governor or his officers shall pass.

The concluding portion of the section is intended to prevent members from capriciously resigning and then offering themselves for re-election, and is obviously a salutary provision.

Powers of Lieutenant-Governor to remove members.

18. The Lieutenant-Governor may remove any member of a District Board or Local Board—

- (a) if he refuses to act, or becomes incapable of acting, or is declared insolvent, or is convicted of any such offence, or subjected by a Criminal Court to any such order, as, in the opinion of the Lieutenant-Governor, formed after due enquiry, unfits him to be a member ;
- (b) if he has been declared by notification to be disqualified for employment in the public service ;
- (c) if he, without an excuse sufficient in the opinion of the Lieutenant-Governor, absents himself from six consecutive meetings of the Board ;
- (d) when he is a salaried servant of the Government, if his continuance in office is, in the opinion of the Lieutenant-Governor, undesirable.

Punjab District Boards Act (XX of 1883), section 14

By section 22 of Act V of 1876 it was provided that a Commissioner who shall have been sentenced to imprisonment shall cease to be a Commissioner. On a reference to the Legal Remembrancer, it was held that the provision was not intended to have retrospective effect, and that the imprisonment must have therefore taken place subsequently to his election or appointment. The same principle would apparently apply to all the grounds of disqualification specified in clauses (a) and (b).

The following extract from the Proceedings of the Council has reference to clause (a) —

"The HON. the ADVOCATE-GENERAL observed that the object of this provision was to enlarge the scope of action. very often a man who had really committed an offence for which he was liable to imprisonment, got off upon some technicality. in such cases the Lieutenant-Governor, looking at all the circumstances of the case in a broad view, would exercise the discretion which this section was intended to give him. But in such cases he thought the person accused should be allowed to show cause or justify himself.

"The HON. MR. MACAULAY said the question was whether the words 'in the opinion of the Lieutenant-Governor' did not imply that he should make an enquiry.

"His HONOR the PRESIDENT observed that the Government every day had to deal with cases of this kind,—cases in which a public officer on trial had been acquitted before a Criminal Court, but in which the Department representing the matter considered that the person concerned ought not to be retained in the Government service,—cases in which where, although guilt had not been legally established, the moral charge was so strong that, in the public interests, the Government did not consider it proper to retain the services of such an individual.

"The motion was put and negatived.

"On the motion of the HON MR MACAULAY the words 'formed after due enquiry' were then inserted after 'Lieutenant-Governor' in clause (a) of section 18" *April 15th. 1885.*

Under the Municipal Corporations Act of 1835, an uncertificated bankrupt was held not disqualified from being elected a councillor or alderman, although by that Act should any person, while holding the office of mayor, alderman, or councillor, be declared a bankrupt, he would immediately be disqualified *Re v Chitty*, 5 A. and E 609.

The question arises as to what classes of persons referred to in the above section would be disqualified for re-election. There seems to be no question that refusal to act, incapability of acting (not being of a permanent nature), and the omission to attend the prescribed number of meetings, would be no ground for permanent disqualification. As regards insolvency, the question is open to some doubt. By section 22 of the Bengal Municipal Act, a person who has ceased to be a Commissioner on account of insolvency may be re-appointed or re-elected. The English Act of 1882 provides, that the disqualification shall cease on the bankrupt obtaining his order of discharge, though, by 46 & 47 Vict, c. 52, s. 32, a certificate that there has been no misconduct is also necessary. The provision of the Act of 1882 referred to, is stated to have been inserted with reference to *Hardwick v. Brown*, L. R., 8 O P., 406, where the Court intimated that a person who had lost a corporate office on account of bankruptcy was disqualified for re-election until he had paid his creditors in full. *Semble* that this ruling is applicable to the present section.

A member who had been removed by the Lieutenant Governor as unfit for office would apparently be permanently disqualified, and the disqualification referred to in clause (b) would also be of a permanent nature. By the 33 & 34 Vict c. 23, s. 2, a person who has been convicted of treason or felony is disqualified from holding any corporate office, only until he has suffered his punishment or been pardoned.

19. When the place of an elected member of a District Board or Local Board becomes vacant by the resignation or removal of the member, or by his death, a new member shall be elected in accordance with the rules made by the Lieutenant-Governor under this Act to fill the place :

Provided that no act of the Board or of its officers, or of the Board in meeting, shall be deemed to be invalid by reason only that the number of the Board, at the time of the performance of such act, was less than the prescribed number.

When the place of an appointed member of a District Board or Local Board becomes vacant as aforesaid, the Lieutenant-Governor may, if he thinks fit, appoint a new member to fill the place.

A person elected or appointed under this section to fill a casual vacancy shall hold office until the person whose



place he fills would regularly have gone out of office, and shall then go out of office, but may be re-elected or re-appointed.

India Act XX of 1883, section 15

Authority to make such rules is conferred by section 138, clause (a). The rules in force will be found *post*.

By clause 4 of section 22 of the Municipal Corporations Act 1882, "no act or proceeding of the Council, or of a Committee, shall be questioned on account of any vacancy in that body." The note to the above in Rawlinson's M C Act is as follows: "This clause is new, and while it will prevent any ill-effect from death, resignation, or absence it will probably be held never to obviate the necessity of the number present at any meeting of the Council being not less than one-third of the whole Council." It does not appear that the second para. of the above section would legalize any act of a Board at a meeting where a full quorum, as provided by the rules, was not present. It would seem, moreover, that, unless otherwise distinctly provided in the rules, the proportion prescribed for a quorum must always be considered as having reference to the whole number of the Board when complete. (*Ibid*, 8th Ed., p. 350.)

20. Every District Board shall be a body corporate by the name of "The District Board of [name of district]," and shall have perpetual succession and a common seal, with power to acquire and hold property, both moveable and immoveable, and, subject to any rules made by the Lieutenant-Governor under this Act, to transfer any such property held by it, and to contract and do all other things necessary for the purposes of this Act, and may sue and be sued in its corporate name.

India Act XX of 1883, section 14.

By section 138, clause (d), the Lieutenant-Governor is empowered to make rules regulating the powers of District Boards to transfer property. The rules in force will be found *post*. By clause (e) of the same section, authority is given to prescribe rules on the subject of contracts. The rules will be found *post*.

"By the name of the District Board," etc.—"When a corporation is erected, a name is always given to it, or, supposing none to be given, will attach to it by implication, and by that name alone it must sue and be sued and do all legal acts, though a very minute variation therein is not material, and the name is capable of being changed (by competent authority) without affecting the identity or capacity of the corporation in other respects. But some name is the very being of its constitution, and though it is the will of the Sovereign that erects the corporation, yet the name is the knot of its combination, without which it cannot perform its corporate functions." (1 *Steph. Comm.*, 11.)

*Perpetual Succession.*—"Corporation or body politic, artificial persons established for preserving, in perpetual succession, certain rights which

being conferred on natural persons only, would fail in process of time. . . . It has power to make bye-laws for its own government, and transacts its business under the authority of a common seal—its hand and mouthpiece; it has neither soul, nor tangible form, so that it can neither be outlawed nor arrested, it only enjoys a legal entity, sues and is sued by its corporate name, and holds and enjoys property by such name. The several members of a corporation and their successors constitute but one person in law" (*Harton's Law Lexicon*)

*Common Seal*—"It is a general rule that a corporation must contract by its common seal but whenever the observance of this rule would occasion great inconvenience, or tend to defeat the very purpose of the business, it is not observed." (*Ibid.*)

*Sue and be sued*—A corporation, "as the general rule, can be guilty of no crime in its corporate capacity. Yet it is liable in certain cases to an indictment, as where it allows a bridge, the repair of which belongs to it by law, to fall into decay. And it is capable of suing or being sued for breach of contract, and for many other kinds of civil injury, as for example a libel" (3 *Steph. Com.* 13). "It must always appear in Court by attorney, for it cannot appear in person, being, as Sir E. Coke remarks, invisible and existing only in intendment and consideration of law." (*Ibid.*)

"A corporation may (i.e., in certain cases), be proceeded against criminally as well for a misdemeanour as a nonfeasance. *Reg v The Birmingham and Gloucester Railway Company*, 3 Q. B. Rep., 223, *Reg v Scott*, 3 Q. B. Rep., 547, *Reg v. The Great North of England Railway Company*, 9 Q. B. Rep., 315." *Empress v. Corporation of Calcutta*, 1, L. R., 3 Cal., 762.

An action for malicious prosecution will lie against a corporation. *Edwards v. The Midland Railway Company*, 6 Q. B. D. Rep., 287.

"We shall briefly repeat here a most important principle of corporation law which has before been adverted to, namely, that a corporation is not responsible as a corporation for acts which, though colourably corporate acts, are not within the competency of the corporation to perform; in such case the individuals who take part in the pretended corporate acts are personally responsible. Thus, when the majority concurred in placing on the corporation books a resolution libelling a Court of Justice, the individuals comprising the majority were held liable to a criminal information, and so in cases of contract." (*Grant on the Law of Corporations*, p. 281.)

*To Contract*.—The section authorizes the Board to enter into contracts necessary for the purposes of this Act, and therefore implies that it is prohibited from entering into any contracts not necessary for such purposes. Such other contracts, though duly executed, would not be binding on the corporation.

"'Corporations,' said Baron Parke in an oft-quoted passage, 'which are creatures of law, are, when their seal is properly affixed, bound just as individuals are by their own contracts, and as much as all the members of a partnership would be by a contract in which all concurred. But where a corporation is created by an Act of Parliament for particular purposes, with special powers, then indeed another question arises. Their deed, though under their corporate seal, and that regularly affixed, does not bind them, if it appears by the express provisions of the Statute creating the corporation, or by reasonable inference from its enactments, that the deed was *ultra vires*, that is, that the legislature meant that such a deed should not be made.'" (1 *Smith's Leading Cases*, 351.)

"The distinction between corporations and trading partnerships is this, that, in the first, the law sees only the body corporate and knows not the individuals, who are not liable for the contracts of the corporation in their private capacity . . . but in the latter, the law looks not to the partnership, but to the individual members of it, who are therefore answerable for the debts of the firm even to their last shilling and acre." (*Wharton's Law Lexicon*, art. corporation)

21. The several District Boards and Local Boards constituted under this Act shall come into existence at such time as the Lieutenant-Governor may, by notification, fix in this behalf.

Time for district  
Boards and Local  
Boards coming into  
existence.

India Act XX of 1883, section 17.

### *Chairman and Vice-Chairman.*

22. Every District Board shall be presided over by a Chairman who shall be appointed by the Lieutenant-Governor, or, should the Lieutenant-Governor in any case so direct, be elected by the members of such Board from among their own number, subject to his approval.

Chairman of District  
Board.

The question has more than once arisen as to who ought to preside at a meeting of the members of a local or municipal authority called to elect a Chairman. If it is the first meeting, or, in other cases, if the former Chairman is not present, it is clear that they should elect one of their number to preside. But supposing the former Chairman is present, should he preside, and can he insist on presiding as a matter of right?

If the Chairman is a candidate for re-election, it is clear that it is not desirable that he should preside, for, by so doing, he may have to decide questions in which he has a direct and personal interest. It further seems doubtful as to whether he can claim the right to preside. For the most reasonable view of the matter would appear to be that, as soon as a meeting is formed to elect a new Chairman, the old Chairman resigns his office. By the Commissioners Clauses Act (10 Vict., c. 16, s. 38), it is provided that the Chairman going out of office may preside, if willing to do so. But the inference would appear to be that, without such a special provision, the former Chairman would not be entitled to preside. On the whole, the best course for the meeting to follow appears to be to choose one of their number to preside, the former Chairman not being necessarily excluded.

It is not necessary that a candidate for the office of Chairman should have a majority in his favour of the votes of the whole number of members present and voting. It is sufficient that he should have more votes than any other candidate. In an English case—*Oldknow v. Wainwright*, 1. W. Bl., 229; 2 Burr., 1017, decided in 1760, and still cited as an authority on the subject, it was held by Lord Mansfield that in an election to a corporate office, where out of twenty-one electors present nine voted for the election of a particular candidate, eleven

protested against his election, but did not vote for anyone else, and one declined to express an opinion at all, the candidate in question was duly elected.

By section 24, the term of office of an elected Chairman or Vice-Chairman shall be the residue of his term of office as a member of the Board. By section 16, an outgoing member may be re-appointed or re-elected.

*Seemly*, that there is nothing to prevent such a member from being re-elected as Chairman or Vice-Chairman.

It will be observed that no special powers are conferred on the Chairman by the Act. His executive powers will be such as may be conferred on him by the Board under section 32, clause (c), or by the Lieutenant-Governor under any of the rules under section 138. Except as otherwise provided in the rules, his powers and duties when presiding at meetings, will be such as are customarily attached to the office of Chairman of a Public Board. Briefly, the more important of them may be summarized as follows —

The most important duty of the Chairman of a meeting is to maintain order, or, in other words, to see that the proceedings and discussions are regularly and properly conducted. He must take care that there is a distinct motion before the meetings, and should allow no speeches to be made which are not strictly relevant to that motion. His decision on all points of order is virtually final. The duty of deciding all questions as to the admissibility of motions and amendments under the rules in force as to notice, or in regard to the terms of the notice convening the meeting in question, is especially imposed upon him. He should insist upon the use of decorous and temperate language, and call any person to order who indulges in unwarrantable personalities, or imputations. Where two members rise at the same time, it is for the Chairman to decide which is entitled to speak. When a motion or amendment is made, and the mover resumes his seat, the Chairman should allow no member to speak unless such member declares that he rises to second the motion or amendment. The Chairman is entitled to insist that all speeches should be addressed to him, and that members should not speak on the same motion more often than the rules permit. The general rule is, that, except in the case of a mover summing up by way of reply, no speaker is entitled to speak twice. "Perhaps it will be safe in a general way to allow a man to speak a second time, if he does so in good faith, for the purpose of commenting on some new point that has arisen since his first speech, or of making some new suggestion of his own, it being clearly understood both by him and by the meeting that he speaks by favor, and not of right." — *Chambers's Handbook for Public Meetings*, p. 25.

Where business involving many details has to be transacted, it is better that the meeting should resolve itself into committee, thereby suspending the ordinary rules of debate, and permitting a general discussion unfettered by them.

According to the procedure usually followed in England, only one amendment can be before the meeting at the same time, that is to say, that the Chairman must not accept a second amendment until the first has either been negatived or accepted as the main question. In this country, however, a different practice prevails, and several amendments are commonly before a meeting at the same time, the last one made being put to the vote first. It must be remembered that an amendment, as its name implies, professes to improve by alteration the original motion. An amendment cannot merely negative the original motion. "A person

objecting to a motion *in toto* must be content to vote 'No' when the question is put from the Chair. When once a motion or amendment has been duly made and seconded, it becomes the property of the meeting, and cannot be withdrawn unless the meeting consents.

For full information as to the powers and duties of Chairmen in regard to meetings, reference may be made to *Palaran's Chairman's Handbook* and *Chambers's Handbook for Public Meetings*.

23. Every District Board shall, from time to time, elect one of its members to be Vice-Chairman of District Board.

By section 32, clause (c), a District Board may make rules as to the powers to be exercised by the Vice-Chairman. In the absence of the Chairman, the Vice-Chairman is entitled to preside at meetings, and will then exercise all the powers of the Chairman referred to in the note to the preceding section. The executive powers of the Vice-Chairman will be exactly what the rules of the Chairman acting according to the rules, may delegate to him. The Vice-Chairman cannot delegate any of his powers to another member. *Delegatus delegare non potest.*

24. The term of office of an appointed Chairman shall be one year from the date of his appointment, but he may be re-appointed on the expiration of such term. Every appointed Chairman shall be deemed to be a member of the Board during such term.

The term of office of an elected Chairman or of a Vice-Chairman of a District Board shall be the residue of his term of office as a member of the Board.

*Seemle*, that there is nothing to prevent the re-election of the Chairman or Vice-Chairman, if he again becomes a member of the Board.

25. Every Local Board shall be presided over by a Chairman who shall be elected by the members from among their own number, subject to approval by the Lieutenant-Governor; or the Local Board may, at a meeting attended by not less than two-thirds of its members, request the Lieutenant-Governor to appoint a Chairman.

If the Local Board fails to elect such Chairman as aforesaid within a period of one month from the time prescribed for such election by any rules made by the Lieutenant-Governor under this Act, or within such extended time as the Lieutenant-Governor may in his discretion allow for

such election, the Lieutenant-Governor shall appoint such Chairman.

The term of office of a Chairman shall be the residue of his term of office as a member of the Board.

By section 32, clause (c), a Local Board may, with the sanction of the District Board, make rules as to the powers to be exercised by the Chairman.

By section 138, clause (c), authority is given to make the rules referred to in the second para. The rules will be found *post*.

*Seemly*, that there is nothing to prevent the re-election of the Chairman, if he again becomes a member of the Board.

With regard to the duties and powers of the Chairman at meetings, see note to section 22.

26. Every Local Board shall, from time to time, elect one of its members to be Vice-Chairman. The term of office of a Vice-Chairman shall be the residue of his term of office as a member of the Board.

By section 32, clause (c), a Local Board may, with the sanction of the District Board, make rules as to the power to be exercised by the Vice-Chairman.

By section 138, clause (c), the Lieutenant-Governor is empowered to lay down rules fixing the time within which a Chairman or Vice-Chairman may be elected. By section 25, the Lieutenant-Governor may appoint the Chairman, if not elected within the prescribed period. As regards the Vice-Chairman, no such provision has been made; but the omission to elect one within the period specified would obviously amount to a default in the performance of a statutory duty, which could be dealt with under section 131.

*Seemly*, that there is nothing to prevent the re-election of the Vice-Chairman, if he again becomes a member of the Board.

Compare note to section 23.

27. A Chairman of a District Board or Local Board may resign by notifying in writing his intention to do so to the Lieutenant-Governor, and, on such resignation being accepted, shall be deemed to have vacated his office. A Vice-Chairman of a District Board or Local Board may resign by notifying in writing his intention to do so to the Board, and, on such resignation being accepted, shall be deemed to have vacated his office.

This is taken from the N.-W. P. and Oudh Local Boards Act—Act XIV of 1883, section 17.

The rules under section 138, clause (f), prescribe the channels through which such resignations must pass, and will be found *post*.

28. The Lieutenant-Governor may remove any Chairman of a District Board or Local Board from his office if he refuses to act, or becomes incapable of acting, or is declared insolvent, or is convicted of any such offence, or subjected by a Criminal Court to any such order, as, in the opinion of the Lieutenant-Governor, formed after due enquiry, unfits him to be Chairman, or, on the application of the Board, if he persistently neglects his duty as Chairman.

A District Board or Local Board may remove its Vice-Chairman from his office if he refuses to act, or becomes incapable of acting, or is declared insolvent, or is convicted of any such offence, or subjected by a Criminal Court to any such order, as, in the opinion of the Board, formed after due enquiry, unfits him to be a Vice-Chairman, or if he persistently neglects his duty as Vice-Chairman.

India Act XIV of 1883, section 18.

The section would not, apparently, have retrospective effect, and the disqualification must therefore have occurred subsequently to appointment or election. See note to section 18.

The power of removing for reasonable cause corporate officers and corporators, or of *amotion* as it is termed in law, is by the common law incident to every corporation. 2 *Kyd on Corporations*, p. 50. The question has been raised, but not determined, as to whether the common law power of amotion still exists, in the case of corporate officers elected under Statutory provisions. Cockburn, C. J., observing that he was far from saying that there was not such a power of removal. *Re Norton*, Q. B., June 8, 1872. As regards the present Act, the power of removing the Chairman and members of a Board having been conferred upon the Lieutenant-Governor, and the case of the Vice-Chairman having been distinctly provided for, it is clear that no such general power of amotion exists.

29. If a Chairman of a District Board dies, resigns, is removed, or becomes incapable of acting, the Lieutenant-Governor may appoint a Chairman, or may direct that a Chairman be elected by the members of such Board from among their own number, subject to his approval.

If a Chairman of a Local Board, or a Vice-Chairman of a District Board or Local Board, dies, resigns, is removed, or becomes incapable of acting, the Board shall, at a special meeting held for this purpose within the period prescribed

by any rules made by the Lieutenant-Governor under this Act, elect one of its members to be Chairman or Vice-Chairman, as the case may be.

A Chairman or Vice-Chairman elected under this section to fill a casual vacancy shall hold office for the residue of his term as member of the Board.

India Act XIV of 1883, section 19

Authority for making the rules referred to in the second para is conferred by section 138, clause (c) The rules will be found *post*

*Semble*, that there is nothing to prevent the re-election of such Chairman or Vice-Chairman if he again becomes a member of the Board.

*A special meeting*—"Meetings are of two kinds, ordinary or general, and extraordinary or special. The former are held periodically at appointed times, and for the consideration of matters in general. The latter are called upon emergencies, and for the transaction of particular business.

"Extraordinary meetings being thus summoned unexpectedly, the notice to them ought to specify very carefully and exactly the occasion of the summons, and all the business proposed to be transacted thereat, so as to call the attention of each member to the circumstances."—*Brice on Ethic Vires*, 840

*Trustees Act*, 1818, section 1—A meeting of a public body is not a legal meeting unless a notice to attend is served on all the members.—*Dobson v. Pussy*, 9 L. J. (O. S.) C. P. 72, 7 Bing. 305.

A public body entrusted with the performance of a public duty cannot hold a valid extraordinary meeting except all the members be summoned who can be summoned, unless the unsummoned members are actually present at the meeting. The proceedings at a meeting at which any individual is not present, who might have been summoned, and was not, are void, though the omission be accidental, or though the individual has given a general notice that he wishes not to be summoned.—*Rex v. Langhorne*, 6 N. and M., 203; 1 A. and E., 538

Where certain acts of a corporation are to be performed at a special meeting, all the persons entitled to be present must be summoned if within summoning distance. The omission to summon any one so entitled renders invalid the proceedings at such meeting in his absence. On the party who supports the validity of such proceedings in the absence of a person who ought to have been summoned rests the *onus* of showing a sufficient cause why such person was not summoned. With one person absent, who ought to have been summoned, even a unanimous decision of those present would be void. *Smyth v. Darley*, 2 H. L. C., 789.

When a special meeting is requisite to do an act which is beyond the competence of an ordinary meeting, the Court will require proof that a full and clear intimation was given that the special meeting would be called to consider such matter. In the absence of adequate notice to the parties entitled to attend the decision of those present will be deemed invalid.—*Valle of Neath Brewery Company, in re*, 21 L. J., Ch., 688; 1 De Gex, M. and G., 421.

### Joint Committees.

30. A District Board may join with any other District Board or with any Municipal or Cantonment authority, or with more than

Joint Committees.



one such Board, or Municipal or Cantonment authority, in constituting, out of their respective bodies, a Joint Committee for any purpose in which they are jointly interested, and in delegating to any such Joint Committee any power which might be exercised by either or any of the Boards or authorities concerned, and may from time to time frame rules as to the proceedings of any such Joint Committee, and as to the conduct of correspondence relating to the purpose for which the Joint Committee is constituted.

Punjab District Boards Act, India Act XX of 1883, section 21

Section 33 provides for the appointment of the establishments of Joint Committees.

### *Conduct of Business.*

31. Minutes of the proceedings at each meeting of a District Board or Local Board shall be drawn up and recorded in a book to be kept for the purpose, and shall be signed by the Chairman of the meeting, and shall be published in such manner as the Lieutenant-Governor may, from time to time, direct, and shall, at all reasonable times and without charge, be open to the inspection of any person resident within, or owning or holding land within, the jurisdiction of such Board.

A copy of every resolution passed by a District Board at a meeting shall, within three days from the date of the meeting, be forwarded to the Magistrate of the district for transmission to the Commissioner.

A copy of every resolution passed by a Local Board at a meeting shall, within three days from the date of the meeting, be forwarded to the District Board and to the Magistrate of the district.

India Act XX of 1883, section 25.

*Minutes of Proceedings* — "The precise form in which the minutes of a Board should be kept, and whether letters and other documents should be placed thereon, or entered upon detached appendices, are matters which may be left to individual experience, so long as an adequate method of arrangement and of cross reference be provided. The entries essential to a due record of procedure are as follows:—Resolutions in the precise form in which they were put from the chair; every question proposed or put from the chair, whether withdrawn, negatived, or superseded; the names of those who voted, together with the number of the votes given upon each division; the names also of those present at each

division, who, if usage so permit, took part in the debate, but abstained from voting; Chairman's decisions upon matters of order, and statements of their opinion regarding practice or procedure; the day and hour upon which a postponed or adjourned proceeding is to be considered. If a special form of notice of business involving the appointment or dismissal of officers, or other important matter, is prescribed, the fact that such notice has been given should be recorded. Indexes also to the minutes and appendices should be kept up systematically, so as to form a complete annual register to the proceedings." *Palgrave's Chairman's Handbook*, p. 97.

It is provided by the second clause that a copy of the minutes of the proceedings is to be forwarded within three days to the Magistrate of the district. It appears clear, therefore, that it is not necessary that the minutes should have been confirmed before a copy is despatched. For, by the usual practice of boards, committees, and councils of all kinds, the minutes are confirmed at the next meeting. This would usually be about a month later. It will be observed that the section does not enact that the minutes are to be signed at the meeting. This procedure was prescribed by the English Municipal Corporations Act, 1835, which provided that the minutes of each council should be "signed by the Chairman at such meeting." As this provision has, however, since been repealed, it would appear not to have worked satisfactorily in practice.

It has been held in several English cases that a Statutory provision that minutes are to be signed by the Chairman of the meeting to which they relate, is complied with by the same Chairman signing them at the following meeting. *West London Railway Company v. Bernard*, 13 L. J., Q. B., 68; 3 Q. B., 873, on a subsequent time. *Miles v. Bough*, 12 L. J., Q. B., 74.

There can be little question as to the truth of the following remarks in Mr. Palgrave's excellent work—"The verification of minutes, it is needless to suggest, would be avoided, if, according to the Parliamentary system, the record of each sitting was issued without delay under the authority of the presiding officer. If printed forms were prepared to be filled up as occasion required, a prompt and methodical issue of the minutes might be obtained, and verbal inaccuracies might be corrected under direction from the Chairman of the next meeting, if his attention be called thereto, either at the commencement or the close of the sitting." *The Chairman's Handbook*, p. 19.

In the case of large and important District Boards, the best plan to adopt is to print the minutes as soon after the meeting as possible, and to furnish each member with a copy, sending at the same time copies to the Magistrate of the district. At the ensuing meeting any inaccuracies can be pointed out, and if it is admitted that there are none, and that the minutes are accurate, they can be taken as read and confirmed at once.

*Confirmation of Minutes*—"The confirmation of minutes is, it must be remembered, a formal proceeding, designed solely for the ratification of the record. No discussion can accordingly be raised thereon regarding the policy enforced by the minutes; far less can general debate be allowed; nor can any amendment be moved to that motion." *Palgrave's Chairman's Handbook*, p. 17.

"*Reg. v. York Mayor*. In the case of meetings of public bodies, 'confirm' is commonly used in the sense of to 'verify.' Per Lord Campbell, C. J.—To confirm the minutes of a meeting means not to give them force, but to declare them accurate. (1 E. and B., 588, at p. 594.)" *Chambers's Handbook of Public Meetings*, p. 106.

32. Every District Board, and every Local Board with Power to make rules the sanction of the District Board, as to business and may from time to time make rules as to—  
 affairs.

- (a) the time and place of its meetings, the business to be transacted at meetings, and the manner in which notice of meetings shall be given;
- (b) the conduct of proceedings at meetings, the due record of all dissents and discussions, and the adjournment of meetings;
- (c) the custody of the common seal and the purposes for which it shall be used;
- (d) the division of duties amongst its members;
- (e) the powers to be exercised by the Chairman or Vice-Chairman, or by sub-committees or members to whom particular duties are assigned;
- (f) the persons by whom receipts shall be granted for money received under this Act;
- (g) the duties, appointment, leave, suspension, and removal of the officers and servants of the Board; and
- (h) other similar matters.

And may from time to time repeal or alter such rules.

Rules made under this section, consistent with this Act, shall be subject to the sanction of the Lieutenant-Governor, and shall, if sanctioned by him, be published in such manner as he may direct; and shall have the force of law so long as they are consistent with the rules made by him under the Act.

India Act XX of 1883, section 26.

Authority to make rules for the conduct of proceedings of Boards and Committees is conferred upon the Lieutenant-Governor by section 138, clause (b). The rules prescribed will be found *post*.

The "division of duties among its members" evidently includes the appointment of sub-committees.

Under clause (c), rules regulating the proceedings of sub-committees should be drawn up. The following rules taken from part (2) of Schedule I of the Public Health Act, 1875 (38 & 39 Vict., c. 55), may be found useful.

*"Rules applicable to Committees of Local Boards."*

"1.—A Committee may meet and adjourn as it thinks proper.

"2.—The quorum of a Committee shall consist of such number of members as may be prescribed by the authority that appointed the Committee, or, if no number is prescribed, of three members.

- "3.—A Committee may appoint a Chairman of its meetings.
- "4.—If no Chairman is elected, or if the Chairman elected is not present at the time appointed for holding any meeting, the members present shall choose one of their number to be Chairman of such meeting.
- "5.—Every question at a meeting shall be determined by a majority of the votes of the members present and voting on that question.
- "6.—In case of an equal division of votes the Chairman shall have a second or casting vote."

The powers of a Committee (or Sub-Committee, to use the term adopted in this Act) will be such as may be delegated to it, subject to the rules drawn up under this section. By section 22, clause (2), of the English Municipal Corporations Act, the acts of all Committees must be submitted to the Council for approval, and the provision appears to be a salutary one.

*Seemle*, that a Sub-Committee cannot delegate its powers to one of its members. *Cook v Ward*, 2 C P. D., 255.

Draft rules of procedure at meetings are given in *Chambers's Handbook of Public Meetings* and *Palgrave's Chairman's Handbook*, both of which works may be consulted with advantage before rules are drawn up under clause (b).

Model Rules under this section have been published by the Local Government for the guidance of Boards, and will be found *post*.

### Establishments.

33. Every District Board, subject to the provisions hereinafter contained, may from time to time determine and appoint the establishment to be employed by it, or by any Joint Committee constituted under section thirty, and may fix the salaries to be paid to such establishment:

Provided—

(1) that no appointment, the monthly salary of which amounts to one hundred rupees or more, shall be created or abolished without the approval of the Commissioner, and that every nomination to, and dismissal from, such an appointment shall be subject to confirmation by the Commissioner;

(2) that the aggregate salaries and allowances in any one financial year of the establishment employed by any District Board for the purpose of heading (D) of Part III of this Act shall not, without the sanction of the Lieutenant-Governor, exceed twenty per centum on the total amount available for expenditure by such Board upon public works during the financial year;

(3) that every District Board shall conform to any rules

made by the Lieutenant-Governor under this Act regarding the qualifications of candidates for employment.

This section reproduces, with considerable modifications, section 133 of B. C. Act IX of 1880, the Bengal Cess Act.

Express authority to lay down the rules referred to in the last para. is conferred by section 138, clause (g). The rules prescribed will be found *post*.

Heading D of Part III is ‘*Public Works*’. Under section 135 of the Cess Act, the limit was twenty-five per cent.

34. A District Board may, subject to proviso (2) of the last preceding section, make, from time to time, with the approval of the Commissioner, rules as to leave of absence and absentee allowances for its establishment.

Rules regarding leave of absence and absentee allowances to officers

Bengal Act IX of 1880, section 131.

35. A District Board may, from time to time, with the sanction of the Lieutenant-Governor, make rules for pensions and gratuities to be granted and paid out of the District Fund to its establishment, and may, with the like sanction, repeal or alter such rules.

Pensions and gratuities to be paid out of District Fund.

Bengal Act IX of 1880, section 138

The word “gratuities” here means gratuities on retirement.

36. Every Union Committee may, from time to time, determine and appoint the establishment to be employed by it, and may fix the salaries to be paid to such establishment:

Union Committee may appoint establishments and fix salaries.

Provided that no appointment, the monthly salary of which amounts to ten rupees or more, shall be created without the consent of the Local Board to which the Union Committee creating such appointment is subordinate.

## CHAPTER II.

### UNION COMMITTEES.

37. No provision contained in this Chapter shall apply to any district, or part of a district, unless and until it has been expressly extended thereto, by notification, by the Lieutenant-Governor.

Operation of Chapter.

38. The Lieutenant-Governor may, by order in writing, constitute any village or group of villages into a Union; and may prescribe for such Union the number of members of which the Union Committee shall consist. Such number shall not be less than five or more than nine.

It shall be lawful for the Lieutenant-Governor from time to time to vary or annul such order.

39. Save as is hereinafter provided, such number shall be elected from among the residents of the Union, in accordance with rules made by the Lieutenant-Governor under this Act, and shall constitute the Union Committee of such Union.

Direct authority to prescribe such rules is conferred by section 138, clause (a). The rules in force will be found *post*.

*Residents*.—See note to section 9.

40. If the electors of any Union fail to elect the full number of members prescribed for the Committee of such Union, the Commissioner may appoint the remainder.

41. Notwithstanding anything in this Act contained, it shall be lawful for the Lieutenant-Governor to direct, by order in writing, for reasons to be stated in such order, that any Union Committee shall consist, either wholly or in part, of members appointed by the Commissioner.

42. The term of office of the members of a Union Committee shall be two years from the date of their election or appointment, but shall include any period which may elapse between the expiration of the said two years and the date of the next subsequent election or appointment, not being an election or appointment under the next succeeding section.

At the expiration of such term, such members may be re-elected or re-appointed.

43. When the place of an elected or appointed member of a Union Committee becomes vacant by the resignation or death of such member, a new member shall be

elected or appointed, in the manner hereinbefore provided, and shall hold office until the person whose place he fills would regularly have gone out of office, and shall then go out of office, but may be re-elected or re-appointed :

Provided that no act of the Committee or of its officers, or of the Committee in meeting, shall be deemed to be invalid by reason only that the number of the Committee at the time of the performance of such act was less than the prescribed number.

With reference to the meaning of the last para., see note to section 19.

44. Any Union Committee may, from time to time, with the consent of the Local Board to which it is subordinate, as hereinafter provided, join with any other Union Committee or Committees in constituting out of their respective bodies a Joint Union Committee for any purpose in which they are jointly interested, and in delegating to any such Joint Committee any power which might be exercised by either or any of the Union Committees, and may from time to time frame rules as to the proceedings of any such Joint Committee and as to the conduct of correspondence relating to the purpose for which the Joint Union Committee is constituted.

It shall be lawful for the Local Board to associate not more than two of its members with any Joint Union Committee constituted under this section.

This section is taken from section 17 of India Act I of 1883, the Central Provinces Local Self-Government Act.

## PART II.

### Finance.

#### GENERAL.

45. The Lieutenant-Governor may, by notification, direct that all or any portion of the funds vested in any local body existing in such district shall be vested in any local authority constituted under this Act, immediately upon such local authority being constituted.

"Local authority" is defined in section 5.

## CHAPTER I.

46. A District Board, on or before the day prescribed in the rules made by the Lieutenant-Governor under this Act, shall hold a meeting for the purpose of fixing the rate at which the road cess shall be levied in the district during the ensuing cess year:

Provided that the rate at which the road cess is levied when this Act comes into force in such district shall not be reduced without the sanction of the Lieutenant-Governor.

Express authority to lay down rules under this section is conferred by section 138, clause (h)

The following remarks from the further report of the Select Committee have reference to this section —

“We have provided in section 16 of the Bill, as now presented, that the rate at which the road cess levied in any district when the Act comes into force shall not be reduced without the sanction of the Lieutenant-Governor. This we consider to be a necessary condition of the extension of the elective system for which we have made provision in Part I. It is generally admitted that the present rate could not be reduced in any district without grave detriment to the public interests, and if the unrestricted power of reduction were conceded, we should be unable to recommend that payers of one rupee of road cess should be allowed to vote for the election of members of Local Boards in 17 districts. It has seemed to us better to place the constitution of these Boards on a popular basis, while safeguarding the funds to be administered by them, than to give a power which could not be exercised without injury to the public interests, and, at the same time, to endeavour to guard against its exercise by leaving the appointment of the members of the Board to the discretion of the Lieutenant-Governor.”

Section 38 of the Cess Act, as amended by Schedule II of the present Act, is as follows —

“38. The road cess for each year shall be assessed and levied in each district as provided in section 6, and (subject to the maximum rate in that section mentioned) at such rate as may be determined for such year by the District Board.”

Section 6 of the Cess Act is as follows —

“6. The road cess and the public works cess shall be assessed on the annual value of lands and on the annual net profits from mines, quarries, tramways, railways, and other immoveable property, ascertained respectively as in this Act prescribed; and the rates at which such cesses respectively shall be levied for each year shall be determined for such year in the manner in this Act prescribed. Provided that the rate at which each such cess shall be levied for any one year shall not exceed the rate of one-half anna on each rupee of such annual value and annual net profits respectively.”



Bengal Government Circular No 682—686 of the 10th February 1887 points out that the case referred to in the proviso to this section is the only one in which the sanction of higher authority is necessary with regard to the rate fixed. “Sections 151 and 153 of the Cess Act having been repealed, and the reference to the latter section in section 40 of the Act omitted, it is no longer necessary for the Lieutenant-Governor to publish the rate of roadcess fixed in any of the districts under reference. The District Boards should therefore be requested to arrange for the publication of the rates in the *Calcutta Gazette* as soon as they are fixed by the Boards at a meeting.”

47. Every District Board shall submit to the Magistrate of the district, for transmission to the Commissioner, *Estimates, reports, and statements of District Board to be submitted to Commissioner* on or before the day prescribed in the rules made by the Lieutenant-Governor under this Act,

(1) a statement of the requirements and an estimate of the probable expenditure of the District Board for the ensuing financial year,

(2) a report of its proceedings,

(3) an account of its receipts and expenditure for the past financial year,

and, from time to time,

such other reports and accounts as the Commissioner may require.

The Magistrate of the district, when he is not Chairman of the Board, shall, on or before the day prescribed in the rules made by the Lieutenant-Governor under this Act, signify in writing to the Board his approval or disapproval of the statement of requirements and estimate. When he disapproves of the statement of requirements and estimate on the ground that the expenditure on salaries, works, or other objects proposed therein appears to be insufficient or excessive, or that any particulars contained therein appear to be erroneous, defective, or improper, he shall state the nature of his objection. The Board shall then consider his objection, and may modify the statement of requirements and estimate, or signify in writing its reasons for adhering to such statement and estimate; and the Magistrate of the district shall thereupon forward the statement of requirements and estimate to the Commissioner.

By section 138, clause (A), the Lieutenant-Governor is empowered to lay down rules prescribing the times for submitting the statements referred to.

No distinct and express authority has been taken in the Act for prescribing the rules referred to in the last para. The general clause (f) at the end of section 138 would probably, however, be considered sufficient for the purpose.

By section 138, clause (i), the Lieutenant-Governor is authorized to make rules prescribing forms for statements, estimates, and accounts. By section 55, the duty of preparing the statements, estimates, and accounts, is imposed upon the Finance Committee.

48. The Commissioner may either approve of the estimate as it stands, or approve of it after making such alterations therein as may seem to him fit; or may cause it to be returned to the Board for such modifications as he may think necessary, and when such modifications have been made, the estimate shall be re-submitted for ratification to the Commissioner:

Power of Commissioner as to estimates.

Provided that the Commissioner shall not make, and shall not require the District Board to make, otherwise than with its own consent, any such alterations as may have the effect of raising the total of such estimate above the total of the sum estimated to be at the disposal of the District Board for expenditure during the financial year.

49. Any estimate prepared and approved as hereinbefore provided may, with the approval of the Commissioner, be amended or revised at any time by the District Board.

Estimates may be amended or revised.

50. It shall be lawful for a District Board, subject to the provisions of any law relating to the raising of loans by local authorities for the time being in force, from time to time to raise loans for the purpose of carrying out any of the provisions of this Act, and to guarantee the payment of interest on such loans, and to form a sinking fund.

District Boards may raise loans and may form a sinking fund.

The law in force on the subject is India Act XI of 1879 as amended by India Act XV of 1885.

The Act and the rules issued under its provisions will be found *post*. By section 8 it is enacted that, except as provided by the Act and the rules made thereunder, no local authority shall for any purpose borrow money upon, or otherwise charge its funds; and any contract otherwise made shall be void.

51. Every Local Board shall submit to the District Board annually, on or before such date as the District Board may appoint, a statement of the requirements and an estimate of the probable expenditure of the Local Board for the ensuing financial year, and shall submit, as often as the District Board may require, accounts of its receipts and expenditure.

The District Board may approve such estimate or may make such alterations therein as it thinks fit.

The District Board shall make arrangements, subject to the approval of the Commissioner, for the examination and audit of accounts submitted to it under this section, and may direct the publication of such accounts.

## CHAPTER II.

### THE DISTRICT FUND.

52. There shall be formed for each district a fund to be called the "District Fund," and there shall be placed to the credit thereof—

(1) The balance of the District Road Fund of the district, after payment of the expenses mentioned in section one hundred and nine of the Cess Act, 1880, as amended by this Act;

(2) All sums levied within the district as fines, penalties, or otherwise under this Act;

(3) All sums accruing within the district, under the provisions of the Cattle Trespass Act, 1871, from pounds which have not been transferred to any Union Committee under section one hundred and eleven of this Act;

(4) All receipts in respect of public ferries within or on the boundary of the district, which have been placed under the management of the District Board under the provisions of the Bengal Ferries Act, 1885;

(5) All receipts in respect of any schools, hospitals, dispensaries, railways, tramways, or other buildings, institutions or works, which may have been constructed by, vested in, or placed under the control and administration of a District Board under Part III of this Act;

(6) All sums which may be allotted to the District Board from the Provincial revenues by the Lieutenant-Governor for any of the purposes mentioned in Part III of this Act, or for any other purpose ;

(7) All sums contributed to the District Board by local bodies or private persons.

The District Fund shall be vested in the District Board, and the balance standing to the credit of the Fund shall be kept in such custody as the Lieutenant-Governor from time to time directs.

District Fund to be  
vested in Board.

*Clause (1).*—Section 108 of the Cess Act, as amended by Act II of 1881, B C., and by the second Schedule of the present Act, states how the District Road Fund is constituted, and is as follows —

“108. The District Road Fund of every district under this Act shall consist of the amount produced by the road cess, of all sums levied or recovered as fines, penalties or otherwise in respect of the cesses under this Act, not being interest levied in respect of public work cess,

of all sums assigned by the Government thereto, whether as a contribution from the proceeds of the public works cess towards the expenses of assessing and collecting such cess jointly with the road cess or otherwise ”

Section 109, as amended by the present Act, is as follows —

“109 The District Road Fund of every district shall be applicable to Application of District the following objects and in the following Road Fund order —

*Firstly.*—To the payment of the cost of establishments entertained and expenses incurred by the Collector under section 91.

*Secondly.*—To the indemnification of the Collector, with the sanction of the Commissioner, for any other costs or damages which he may have incurred, or for which he may have become liable, in the course of the proceedings for the assessment and collection of the cesses under this Act.

And the balance, after payment of such expenses, shall be credited to the District Fund of the district.”

*Clause (2) —1. c* All sums levied within the district, under this Act, as fines, penalties, or otherwise.

Sums levied by a Union Committee under section 118 will, however, be credited to the Union Fund. By section 56 all sums received by a Union Committee shall be credited to the Union Fund.

*Clause (3)* —There is, apparently, a slight mistake here. By section 56, “all sums accruing within the Union under the Cattle Trespass Act, 1871,” shall be credited to the Union Fund. This provision is positive, and has no reference to section 111. That section merely provides that powers with regard to the establishment, maintenance and management of pounds, may be transferred to the Union Committee. It does not deal with the transfer of particular pounds to the Union Committee, nor with the application of the proceeds thereof ; the latter question having been already settled by section 56. The general intention of the Act appears to be that the clause should be read as follows :—

"All sums accruing within the district under the provisions of the Cattle Trespass Act, 1871, except as otherwise provided in section 56 of this Act."

By section 61, powers may be transferred to the District Board with regard to the management of pounds.

*Clause (4)*—"All receipts in respect of public ferries" was substituted in Council for "the proceeds of public ferries," in order that fines and other miscellaneous receipts might be included. By section 35 of the Bengal Ferries Act the Lieutenant-Governor may order that any public ferry situated within a district, in which a District Board has been established under the present Act, shall be managed by such District Board, and that all or any part of the proceeds of such ferry, and of fines levied and compensation received, shall be paid into the District Fund.

*Clauses (6) & (7)*—It is obvious that sums allotted to the District Board for a particular purpose can only be expended on that purpose and on no other. Similarly, sums contributed by local bodies or private persons for special objects could only be applied to carry out such objects, and not otherwise. Notwithstanding, therefore, that by the present section all such sums are to be credited to the District Fund, and that by the next section the objects upon which the District Fund may be expended and the order in which such objects are to receive preference, are specified, the provisions in question must be understood as subject to the restrictions indicated.

**53.** The District Fund shall be applicable to the following objects, and in the following order:—

*Firstly.*—To the payment of any sums which the District Board may be liable to pay as interest upon loans raised by it under section fifty for the purposes of this Act, and to the formation of a sinking fund, when required.

*Secondly.*—To the payment of any sums which the District Board may under this Act from time to time have undertaken to pay as interest on capital expended on any works which may directly improve the means of communication within the district or between such district and other districts.

*Thirdly.*—To the payment of such percentage as the Lieutenant-Governor may from time to time direct towards the cost of audit, and towards the cost of establishments in any office of account or in any treasury:

Provided that the total amount which any District Board may be required to pay on this account shall not in any year exceed two per centum on the whole amount of the District Fund for such year.

*Fourthly.*—To the payment of the salaries of the establishment employed by the District Board for the purposes of this Act, and of any pensions and gratuities granted under section three and section thirty-five, and to the payment to the Government of such percentage as the Lieutenant-Governor may from time to time direct on the salaries of such establishment, in consideration of the Government undertaking to pay the leave and pension allowances of such establishments.

*Fifthly.*—To the payment of expenses incurred by the District Board in the performance of the duties imposed by this Act, and in the construction, repair and maintenance of any works which may become vested in, or be placed under, the control and administration of such Board under Part III of this Act.

*Sixthly.*—To the payment, at such rates as the Lieutenant-Governor may direct, of the travelling expenses incurred by members of the District Board in attending meetings of the Board or meetings of a Joint Committee.

*Seventhly.*—To the payment of expenses incurred by the District Board under section eighty of this Act.

*Eighthly.*—To investment in any local debenture loans issued by the Government of India, or by any municipal authority or local authority, for the construction of public works which may directly improve the means of communication within the district, or between such district and other districts:

Provided—

- (1)—That no sum shall be expended from the District Fund in the construction of any channel for the purposes of irrigation;  
or for the purposes of drainage connected with any irrigation works in charge of public officers;  
or for the improvement or maintenance of any water-channel on which tolls are levied, when no portion of the proceeds of such tolls is paid into the District Fund.
- (2)—That no part of the District Fund shall be applied to the construction, repair or maintenance of any road, within any municipality which

has been, or may hereafter be, constituted under the Bengal Municipal Act, 1884, unless such road shall have been expressly excluded from the operation of the said Act under section thirty thereof.

These provisions are subject to the restrictions referred to in the note to the preceding section.

*Clause (2).*—Compare section 82.

*Clause (5)*—Payment of compensation under section 145, and costs of litigation under sections 141, 142, 144 and 146, would come under this clause. The costs of other litigation, undertaken *bonâ fide* and on reasonable grounds for the defence of the rights of the corporation, may be paid from the corporate funds, though such litigation is eventually unsuccessful. *Reg v. Mayor of Tamworth* 19 L T. N. S., 433. The proceedings of District Boards in reference to civil suits are, however, subject to the rules laid down under clause (s) of section 138.

*Clause (6).*—The following circular refers to this clause

L. S. G.—Nos 661—68, Dated 10th Feb. 1887.

I am directed to state for your information, and for communication to the District Boards in your Division, that, under section 53 (clause 6) of the Bengal Local Self-Government Act, 1885, the Lieutenant-Governor is pleased to direct that members of District Boards shall be permitted to draw travelling allowance from the District Fund for attending meetings of the Board or of a Joint-Committee at rates not exceeding those fixed for officers of the second class under the Civil Travelling Allowance Code. I am to point out that the law authorizes the payment of travelling allowance to members of a District Board only for attending meetings of the District Board or of a Joint-Committee, but not for inspection work or for attending meetings of Sub-Committees. Members of Local Boards are not entitled to any travelling allowance under the law.

*Clause (7).*—Section 80 refers to railways and tramways.

*Clause (8).*—By section 81, a District Board is authorized to subscribe to any such debenture loan.

The provision of section 30 of the Bengal Municipal Act is as follows:—  
“But the Local Government may, from time to time, by notification exclude any road, bridge, or drain from the operation of this Act, and may cancel such notification wholly or in part.”

Accounts of District Fund how to be kept and published.

54. Account ~~Books~~ of the District Fund shall be kept by an officer to be appointed by the District Board.

An account showing the receipts and expenditure during the quarter, arranged under the proper heads and duly balanced, shall be prepared immediately after the close of each quarter and published in such manner as the Lieutenant-Governor directs, and any person resident in, or owning or holding land in the district, may at all reasonable times inspect any such account without payment of a fee.

A similar account showing the income of the District Fund under each head of receipt, the charges of establishment, the works undertaken, the sums expended on each work, and the balance, if any, of the Fund remaining unspent at the end of the year, shall be prepared for each financial year as soon as possible after its close, and shall be open to inspection as aforesaid.

Bengal Municipal Act, section 71.

See note to next section.

55. Every District Board shall appoint a Finance Committee consisting of so many members as it thinks fit.

It shall be the duty of such Committee to prepare the statements, estimates, and accounts required for submission under section forty-seven, and generally to superintend all matters connected with the finances and accounts of the District Board.

Its duties.

The Finance Committee shall at all times, when required so to do, produce its accounts for audit by any officer who may be appointed by the Lieutenant-Governor in that behalf.

By section 138, clause (1), the Lieutenant-Governor is empowered to make rules prescribing forms for statements, estimates and accounts, and regulating the keeping, checking and publication of such accounts and the manner of periodical audit, under this and the preceding section. The prescribed rules will be found *post*.

Rules providing for the appointment and payment of auditors of accounts have been prescribed under clause (2) of section 138, and will be found *post*.

## CHAPTER III.

### THE UNION FUND.

56. There shall be formed for each Union a fund to be called the "Union Fund," and there shall be placed to the credit thereof—

(1) All sums accruing within the Union under the Cattle Trespass Act, 1871 ;

(2) All sums assigned thereto by the Lieutenant-Governor or District Board, whether as a contribution towards the cost of making village roads or otherwise ;

(3) All other sums received by the Union Committee in the execution of this Act.



The Union Fund shall be vested in the Union Committee, and the balance standing to the credit of the Fund shall be kept in such custody as the Lieutenant-Governor from time to time directs.

Central Provinces Local Self-Government Act, India Act I of 1883, section 23.

By section 111, powers may be conferred upon the Union Committee with regard to the establishment, maintenance and management of pounds. From the present section, it is clear that whether the management has been made over or not, the proceeds of all pounds within the Union will be credited to the Union Fund. Compare notes to section 52, clause (3), and section 111.

Application of Union Fund.

57. The Union Fund shall be applicable to the following objects, and in the following order:—

(1) To the payment of establishments employed, and expenses incurred, by the Union Committee for the purposes of this Act.

(2) To the payment of the expenses incurred by the Union Committee in respect of the duties imposed, and powers conferred, upon it under Part III of this Act, and of any expenses that may be incurred through its default in carrying out any of such duties.

Chapter III of Part III is referred to in the second clause. Section 36 refers to the establishments of Union Committees. The latter portion of clause (2) evidently refers to compensation paid under section 145.

Accounts of Union Fund how to be kept and published.

58. Account books of the Union Fund shall be kept by an officer to be appointed by the Union Committee.

An account showing the receipts and expenditure during the quarter, arranged under the proper heads and duly balanced, shall be prepared immediately after the close of each quarter and published in such manner as the Lieutenant-Governor directs, and any person resident in, or owning or holding land in, the Union may at all reasonable times inspect any such account without payment of a fee.

A similar account showing the income of the Union Fund under each head of receipt, the charges of establishment, the works undertaken, the sums expended on each work, and the balance, if any, of the Fund remaining unspent at the end of the year, shall be prepared for each

financial year as soon as possible after its close, and shall be open to inspection as aforesaid.

Copies of the quarterly and yearly accounts shall be submitted to the Local Board to which such Union Committee is subordinate.

Bengal Municipal Act, section 71.

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## PART III.

### *Duties and Powers of Local Authorities.*

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#### CHAPTER I.

#### DUTIES AND POWERS OF DISTRICT BOARDS.

59. The provisions included under the headings A to D (both inclusive) of this Chapter shall be in force as regards every District Board, unless and until the Lieutenant-Governor shall otherwise direct.

The headings in question are—

- A.—Pounds.
- B.—Education.
- C.—Medical.
- D.—Public Works.

60 No provision included under the headings E to I (both inclusive) of this Chapter shall apply to any District Board, unless and until it has been expressly extended thereto by notification by the Lieutenant-Governor.

The headings in question are—

- E.—Sanitation.
- F.—Vaccination.
- G.—Census.
- H.—Famine Relief.
- I.—Miscellaneous.

#### *A.—Pounds.*

61. Every District Board shall exercise such powers in regard to the establishment, maintenance and management of pounds, as may be transferred to it by order notified under Act XVIII of 1883.

By section 59, the provisions of this section apply to all District Boards. Act XVIII of 1888 will be found *post*.

By notifications published in the *Calcutta Gazette* of April 6th, 1887, the functions of the Magistrate of the district under Chapters I to III of the Cattle Trespass Act, were transferred to the District Boards.

By section 111, similar powers may be conferred upon Union Committees, and the present section will, therefore, only apply to such pounds as may not have been placed under the management of Union Committees. By section 56, the proceeds of all pounds within a Union shall be credited to the Union Fund, and by section 52, clause (3), all such proceeds as are not credited to the Union Fund shall be credited to the District Fund. See note to section 52, clause (3).

### B.—Education.

By section 59, the provisions under this head apply to all District Boards.

62. Subject to any rules made by the Lieutenant-Governor under this Act, every District Board shall be charged with, and be responsible for, the maintenance and management of all primary and middle schools under public management within the district, the construction and repair of all buildings connected therewith, the appointment (subject to the provisions of section thirty-three) of all masters and assistant masters thereof, and the payment of the salaries of such masters and assistant masters:

Provided that nothing contained in this section shall be held to apply to schools for the education of Europeans and Eurasians.

Power to lay down rules regulating the maintenance and management of schools, is conferred by section 138, clause (j) The rules in force will be found *post*

*Under public management.*

The following definition of an educational institution under public management has been laid down in the "Rules for the preparation of the General Statistical Tables of the Annual Report on Public Instruction."

Rule 3.—"Every public school or college (1) which is under the direct management of Government, or of officers or committees acting on behalf of Government, or of boards exercising statutory powers; and (2) in which the staff of teachers is appointed and dismissed by Government or by such officers, committees, or boards, should be classed as an institution under *public management*."

63. Subject to any rules made by the Lieutenant-Governor under this Act, a District Board may, with its own consent, be charged with, and made responsible for, the maintenance

and management of any other schools or class of schools within the district.

Authority to prescribe such rules, is conferred by section 138, clause (j).

64. It shall be lawful for the Lieutenant-Governor to declare that the maintenance and management of any High English school under public management, situated within a town which has been or may hereafter be constituted a municipality under the Bengal Municipal Act, 1884, shall be entrusted to a Joint Committee, consisting partly of members delegated by the Commissioners of such municipality and partly of members delegated by such District Boards as may be named in the order.

Every order issued under this section shall specify the number of members to be delegated, and the proportion of the cost of maintenance of the school to be provided, by each of the local authorities and the municipal authority named therein.

Every Joint Committee appointed under this section shall, in respect of any such school, have the same powers and be subject to the same liabilities, as are by this heading conferred and imposed on District Boards.

This section is subject to such rules as may be enacted under the authority conferred by section 138, clause (j).

*Under public management.*

For the meaning of these words, see note to section 62.

65. It shall be lawful for the Lieutenant-Governor from time to time to transfer to a District Board such funds as he may deem necessary for expenditure on the improvement of primary schools within the district under private management. And, subject to any rules made by the Lieutenant-Governor under this Act, the Board shall be charged with, and be responsible for, the proper distribution of such funds.

By section 52, clause (G), sums transferred under this section will be credited to the District Fund. It is obvious, however, that section 53 notwithstanding, they can only be expended on the improvement of primary schools.

*Under private management.*

By the rules of classification prescribed with the authority of the Government of India, the following definition of a school under private management is given :—

*Rule 4.*—“ Every public school or college, under the management of private persons or associations, should be classed as an institution under

*private management.* It will be aided or unaided, according as it does or does not receive a grant from provincial revenues or from Local or Municipal Funds."

Authority to make the rules referred to in this section, is conferred by section 138, clause (j).

### C—Medical.

By section 59, the provisions under this head apply to all District Boards

The sections under this head are based to a considerable extent upon the provisions of the English Public Health Act, 1875 (38 & 39 Vic., c. 55).

66. It shall be lawful for the Lieutenant-Governor from time to time to direct by notification that any public charitable dispensary or hospital within a district shall be under the control and administration of the District Board. And the District Board shall thereupon be charged with the control and administration thereof, and the construction and repair of all buildings connected therewith.

The Lieutenant-Governor may at any time vary or annul any order made under this section.

67. A District Board may provide, for the use of the inhabitants of the district, dispensaries, hospitals, or temporary places for the reception of the sick, and for that purpose may

itself build such dispensaries, hospitals, or places of reception ; or

contract for the use of any such dispensary, hospital, or place of reception, or of any part thereof ; or

enter into any agreement with any person having the management of any hospital for the reception of the sick inhabitants of the district, on payment of such annual or other sum as may be agreed on.

68. Two or more District Boards may, with the approval of the Commissioner or Commissioners, combine in providing a common dispensary, hospital, or place for the reception of the sick, and, with the

like approval, fix the proportions of the cost thereof to be borne by them respectively.

69. A District Board may, with the approval of the Commissioner, contribute such annual or other sum as may be agreed on towards the cost of the maintenance of any dispensary or hospital which is situated outside the district, but is habitually used by the inhabitants of the district.

70. A District Board may, with the approval of the Commissioner, provide, or contract with any person to provide, a temporary supply of medicine and medical assistance for the poorer inhabitants of the district.

61. Every District Board, in exercising the powers vested in it by the five last preceding sections, shall conform to any rules made by the Lieutenant-Governor under this Act.

Authority to make such rules, is conferred by section 138, clause (k).  
The rules which have been prescribed will be found *post*.

72. It shall be the duty of the District Board to submit such returns of births and deaths as the Magistrate of the district may from time to time require in respect of all areas to which the provisions of Part I, Chapter II, have been extended.

That is to say, in respect of which Union Committees have been formed.

#### *D.—Public Works.*

By section 59, the provisions under this head apply to all District Boards.

73. From and after the establishment of a District Board in any district, all roads, bridges, channels, buildings and other property, moveable or immovable, held by, or under the control and administration of, the District Road Committee or any Branch Committee in such district for the purposes of the Cess Act, 1880, shall for the purposes of this Act, be under the control and administration of such District Board:

Provided that all village roads within the limits of any Union established in the said district shall be under the control and administration of the Union Committee.

*Control and Administration.*—The following extract, from the Further Report of the Select Committee, explains the object of the use of these terms —

“In the sections relating to Public Works, as throughout this chapter, we have, in accordance with the instructions of the Secretary of State, omitted all language which would appear to involve transfer of any property vested in Her Majesty. In regard to all works or buildings to be now made over, we have used the words ‘control and administration.’ We have used the word ‘vest’ in regard only to works to be constructed by the District Boards from its own funds, or hereafter in any way to be acquired by it.”

Apparently a village road will mean any road which the District Board does not take on its own list and repair from its own funds. The distinction between a district road and a village road, is a merely arbitrary one. Roads for the construction or repair of which distinct allotments were made in the estimates of the District Road Committee were district roads all others being village roads. By Circular No 64a, of the 17th July 1878 (Public Works), it was ordered that a road or work costing more than Rs. 1 000 should be considered to be a district work.

The term “road” has not been defined in the Act, but it is clear that except in section 76, which would evidently include the case of a private road, it always means a highway, that is to say, a road over which a public right of way exists, or, as it has been defined, a passage which is open to all the king’s subjects. “It may be a *footway*, appropriated to the sole use of pedestrians; a *pack and prime way*, which is both a horse and footway; or a *cart way*, which comprehends the other two, and also a cart and carriage way. Co. Lit., 56. But to whichever of these classes it belong, it is still a highway, for ‘highway is the genus of all public ways, as well cart, horse or footways.’” 2 *Smith’s Leading Cases*, p. 137.

A highway ordinarily “derives its existence from a dedication to the public by the owner of the land over which the highway extends of a right of passage over it; and this dedication, though it may not be made in express terms, as it indeed seldom is, may and will be presumed from an uninterrupted use by the public of the right of way claimed. *R. v. Lloyd*, 1 Camp., 260 . . . . . An open user as of right by the public raises a presumptive inference of dedication requiring to be rebutted; and when such user is proved, the onus lies on the person who seeks to deny the inference resulting from it to shew negatively that the state of the title was such, that no one could make a valid dedication. *R. v. Petrie*, 4 E. & B., 437” (*ibid*, p. 40). “No particular time is necessary for evidence of a dedication. If the act of dedication be unequivocal, it may take place immediately. For instance, if a man build a double row of houses opening in to an ancient street at each end, making a street, and sells or lets the houses, that is *instantly* a highway.” *Per Chumbré, J., in Wooller v. Hadden*, 5 Taunt., 126.

“It is an established maxim—once a highway, always a highway—for the public cannot release their rights, and there is no extinctive presumption or prescription. . . . See the judgment of Byles, J., in

*Daves v Hawkins*, 8 C.B.N.S., 858" 2 *Smith's Leading Cases*, p. 114. Compare *Empress on the prosecution of Jodunath Ghose v. Dreyonath Dey*, I. L. R., 2 Cal., 425, quoted in the note to section 109.

74. It shall be lawful for the Lieutenant-Governor from Government may time to time to direct that any road, place other property bridge, channel, building or other under District Boards. property, moveable or immoveable, which is vested in Government and which is situated within a district, shall, with the consent of the District Board of such district, and subject to such exceptions and conditions as the Lieutenant-Governor may make and impose, be placed under the control and administration of the District Board for the purposes of this Act, and thereupon such road, bridge, channel, building, or other property shall be under the control and administration of the District Board, subject to all exceptions and conditions so made and imposed, and to all charges and liabilities affecting the same.

*Control and Administration.*—See note to preceding section.

75. Every road, building, or other work constructed by a District Board from the District Fund shall be vested in the District Board by which it has been constructed.

Works constructed by District Board to be vested in it.

*Shall be Vested*—"We have used the word 'vest' in regard only to works to be constructed by the District Board from its own funds, or hereafter in any way to be acquired by it." *Further Report, Select Committee.*

76. A District Board may agree with the person in whom the property in any road, bridge, tank, ghât, well, channel or drain is vested to take over the property therein, and after such agreement may declare, by notice in writing put up thereon or near thereto, that such road, bridge, tank, ghât, well, channel or drain has been transferred to the District Board.

Thereupon the property therein shall be vested in the District Board, and such road, bridge, tank, ghât, well, channel or drain shall thenceforth be repaired and maintained out of the District Fund.

Here the term "road" evidently means a private road, and not a highway.



77. Every District Board shall, at such times and in such form as the Commissioner may direct, submit a schedule of all public works subject to the control of, or vested in, such District Board.

*“ Subject to the control of, or vested in ”* Compare note to section 73.

78. It shall be the duty of every District Board to provide for the repair and maintenance of roads, bridges, water-channels, and other works for directly improving communications, which have been taken charge of by the District Board under this Act, or towards which it may have agreed to contribute; and for the construction of new roads, bridges, water-channels, and other means of communication.

By section 86, the powers of the District Board under this section are subject to rules made by the Lieutenant-Governor with regard to the submission for approval of plans, designs, and estimates. By section 138, clause (m), distinct authority is given for the making of such rules. The rules laid down under the clause in question will be found *post*.

79. It shall be lawful for a District Board to take measures for, or to contribute towards, the construction, repair, and maintenance of any works which may directly improve the means of communication within the district or between the district and other districts; the planting of trees by the roadside; and the construction and maintenance of any means and appliances for improving the supply of drinking water, or for providing or improving drainage.

This section is subject to the provisions of section 86. See note to preceding section

Circular No 10 of 28th October, 1878, has reference to the planting of fruit-trees on the sides of roads by District Road Committees.

80. It shall be lawful for a District Board, with the sanction of the Lieutenant-Governor, either singly or in combination with any municipal authority or any other local authority, to construct and maintain within, or partly within and partly without, its own district, a railway or

tramway under the provisions of any law for governing the construction of railways or tramways for the time being in force in Bengal, and to do all lawful acts which may be necessary in that behalf.

B. C Act III of 1883 relates to the construction of tramways in Bengal.

By section 3 of the Tramways Act, the District Board cannot apply for such sanction, until a resolution approving of such application has been passed at a special meeting of which a month's previous notice has been given, and at which two-thirds of the members of the Board must have attended and voted.

The seventh clause of section 53 authorizes the application of the District Fund to the purposes of this section.

81. It shall be lawful for a District Board, with the sanction of the Lieutenant-Governor, to subscribe to any debenture loan raised by the Government of India or by any municipal authority or local authority for the construction or maintenance of any railway or tramway which, in the opinion of such District Board, is likely to be of direct benefit to the district.

By the eighth clause of section 53, the application of the District Fund to such purposes is directly authorized.

82. It shall be lawful for the District Board, with the sanction of the Lieutenant-Governor, from time to time to guarantee the payment from the District Fund of such sums as it shall think fit as interest on capital expended on any railways, tramways, or other works which may directly improve the means of communication within the district or between the district and other districts.

Authority for the payment of such interest from the District Fund, is conferred by the second clause of section 53.

83. It shall be lawful for a District Board from time to time to undertake on behalf of the Government, and upon such conditions as may be agreed upon, the construction, repair, and maintenance of any public building or other work which is the property of the Government :

Provided that the cost of such construction, repair, or maintenance shall be defrayed by the Government.

84. Subject to the provisions of section thirty-three

District Board to ap- and to any rules made by the Lieuten-  
point Engineer and his ant-Governor under this Act, every  
subordinates.

District Board shall appoint a properly  
qualified person to be its Engineer, and such and so  
many subordinate officers under his orders as it may think  
necessary.

Authority to prescribe rules regulating the mode of appointment of  
the District Engineer under this section, is conferred by section 138,  
clause (7). The prescribed rules will be found *post*. Rules regarding  
the qualifications of all candidates for employment are authorized by  
clause (g) of the same section, and will also be found *post*.

85. It shall be the duty of the District Engineer to pre-  
pare all plans, designs, specifications

Duties of District  
Engineer.

and estimates which the District  
Board may require, to carry out such  
works as it may direct, and to conform generally to all  
rules that may be made by the District Board under sec-  
tion thirty-two or by the Lieutenant-Governor under sec-  
tion one hundred and thirty-eight.

Clause (2) of section 138 empowers the Lieutenant-Governor to pre-  
scribe rules regulating the performance and exercise of the duties and  
powers of the District Engineer.

86. The powers of the District Board under sections

Powers of Boards un- seventy-eight and seventy-nine shall  
der sections seventy- be subject to any rules made by the  
eight and seventy-nine Lieutenant-Governor under this Act  
to be subject to rules regarding the submission for approval  
for approval of plans of plans, designs, specifications, and estimates.

By section 138, clause (m), the Lieutenant-Governor is empowered to  
make such rules. The rules which have been prescribed will be found  
*post*.

### *E.—Sanitation.*

By section 60, these provisions will not apply to any District Board,  
unless expressly extended thereto.

87. It shall be the duty of every District Board, subject

District Board to pro-  
vide for sanitation.

to any rules made by the Lieutenant-  
Governor under this Act, to provide,  
so far as may be possible, for the

proper sanitation of its district, and to incur such expenses or undertake such liabilities as may be necessary in that behalf.

Authority for laying down such rules, is conferred by section 138, clause (n).

88. A District Board may, with the approval of, and subject to such limits of cost as shall be imposed by, the Commissioner, provide any place within its district with a proper and sufficient supply of water, and for this purpose may—

- (1) construct, repair, and maintain water-works, wells, or tanks, and do any other necessary acts;
- (2) take on lease or hire any water-works and purchase any water-works, or any water, or right to take or convey water, either within or without its district; and
- (3) contract with any person for a supply of water.

89. All streams, channels, water-courses, tanks, reservoirs, springs, and wells situated within the district, and not being private property or under the control of any officer of the Government, shall, for the purposes of this Act, be under the control and administration of the District Board.

This section is taken from section 198 of the Bengal Municipal Act.

90. The District Board may, by an order duly published at such places and in such manner as it may deem fit, set apart convenient tanks, parts of rivers, streams, or channels situated within the district, and not being private property or under the control of any officer of the Government, for the supply of water for drinking and for culinary purposes; and from the date of publication of such order, such tanks, parts of rivers, streams or channels shall be held to be public springs or reservoirs.

Bengal Act III of 1884, section 199.

By section 277 of the Penal Code, the offence of voluntarily corrupting

or fouling the water of any public spring or reservoir, is punishable with three months' imprisonment and five hundred rupees fine.

91. It shall be lawful for a District Board to appoint a properly qualified person to be its Sanitary Inspector and, subject to the provisions of section thirty-three, fix the salary of such Sanitary Inspector and the details of the establishment subordinate to him.

District Board to appoint Sanitary Inspector.

Power to make rules prescribing the qualifications of all candidates for employment under section 33, is given by section 138, clause (g).

### F.—Vaccination.

By section 60, these provisions will not apply to any District Board, unless expressly extended thereto

92. Every District Board shall, within its district, be charged with the appointment, payment, management, and supervision of all public vaccinators.

District Board to have supervision of vaccinators within their districts.

The qualifications of public vaccinators are prescribed in the rules laid down under the Vaccination Act (B. C. V. of 1880). By section 2 of the Act, public vaccinator "is defined to mean "any vaccinator appointed under this Act, or any person duly authorized to act for such public vaccinator "

93. Every District Board shall appoint a properly qualified person to be Inspector of Vaccination within its district, and shall, subject to the provisions of section thirty-three, fix the salary to be paid to such person.

District Board to appoint Inspectors of Vaccination.

Every Inspector of Vaccination appointed under this section shall, within the district, exercise the powers and perform the duties assigned to the Superintendent of Vaccination under the Bengal Vaccination Act, 1880.

By section 16 of the Vaccination Act (B. C. V of 1880), the Superintendent shall have a general control over all the proceedings of public vaccinators, and shall in addition exercise such duties in respect to vaccination as the Lieutenant-Governor may require. The Act will be found *post*. Authority to make rules prescribing the qualifications of all candidates for employment, is conferred by section 138, clause (g). The rules relating to Inspectors of Vaccination will be found *post*.

94. In every district to which the Bengal Vaccination Act, 1880, has been, or may hereafter be, extended, the District Board shall have the powers of the Magistrate of the district under section twenty-five of the said Act.

District Board to have powers of Magistrate in districts to which the Vaccination Act extends.

By section 25 of the Bengal Vaccination Act, B C Act V of 1880, the Magistrate of the district may, in any municipality other than the town of Calcutta, and in any local area to which the Act may be extended, exercise all the powers conferred by the Act upon the Corporation of the Town of Calcutta. As by section 1 of the present Act its provisions do not apply to any municipality, the powers of the Magistrate of the district with regard to municipalities, are not delegated to the District Board by this section.

95. The Commissioner may, with the sanction of the Lieutenant-Governor, make rules consistent with this Act, and with the Bengal Vaccination Act, 1880, for the guidance of every District Board in the exercise of the powers conferred under the three last preceding sections, and may from time to time, with the like sanction, repeal or alter such rules.

Commissioner to make rules for guidance of District Boards

The rules must obviously be consistent with any rules made by the Lieutenant-Governor under section 33 of the Vaccination Act.

96. The four last preceding sections, so far as is consistent with the tenour thereof, shall be read with, and form a part of, the Bengal Vaccination Act, 1880.

Act to be read with the Bengal Vaccination Act.

The Act will be found *post*.

#### G.—Census.

By section 60, these provisions will not apply to any District Board unless expressly extended thereto.

97. It shall be lawful for the Commissioner, with the sanction of the Lieutenant-Governor, at any time to require a District Board to take an account of the number of persons who, at the time of taking such account, shall be within the district of such District Board:

Commissioner may direct District Board to take a census.

Provided that no part of the cost incurred in taking such account shall be charged upon, or be defrayed out of, the District Fund.

98. Every District Board which shall be required to take an account under the last preceding section shall, in taking such account, conform to any rules made by the Lieutenant-Governor under this Act, and to the provisions of any Act for the time being in force for regulating the taking of a census.

Direct authority to prescribe such rules is conferred by section 138, clause (c). No rules have as yet been prescribed under that clause.

## *II—Famine Relief.*

By section 60, these provisions will not apply to any District Board unless expressly extended thereto

99. It shall be lawful for a District Board, subject to such limit of expenditure as may be prescribed by the Commissioner, to take relief measures in case of famine. District Board may take such measures as it thinks fit for the relief of famine within its district, and for that purpose to—

(1) open and maintain such relief works as may be necessary ;

(2) open and maintain such temporary hospitals, poor-houses, orphanages, and places for the gratuitous distribution of food as may be necessary ;

(3) employ such extra medical or other assistants as may be necessary.

## *I.—Miscellaneous.*

By section 60, none of these provisions will apply to any District Board until expressly extended thereto.

100. It shall be lawful for a District Board, with the approval of the Commissioner, and subject to any rules made by the Lieutenant-Governor under this Act, to

(1) establish and maintain, at such places within its district as it thinks fit, staging bungalows and serais. Staging bungalows and serais for the use of travellers, and charge such fees for the use of such bungalows and serais as it thinks fit :

Provided that such fees shall in no case exceed the amount prescribed by the Commissioner ;

(2) offer rewards, upon such scale as may be approved by the Commissioner, for the destruction of noxious animals within the district;

(3) hold, within its district, from time to time, fairs and exhibitions of cattle, country-produce, and agricultural implements, or local manufactures, and incur such expenditure and charge such fees in connection therewith, as may from time to time be approved by the Commissioner;

(4) undertake and carry out any other local work likely to promote the health, comfort or convenience of the public, and not otherwise provided for by this Act.

Direct authority to prescribe such rules, is conferred by section 138, clause (p). No such rules have as yet been laid down.

## CHAPTER II.

### DUTIES AND POWERS OF LOCAL BOARDS.

101. The Lieutenant-Governor, or, subject to his control, a District Board, may direct that, within the area subject to the authority of a Local Board, any matter placed under the control and administration of the District Board under this Act shall be wholly or partly transferred to the control and administration of the Local Board, with adequate funds for the purposes of such control and administration.

A Local Board, as the agent of, and subject to the control of, the District Board, shall, so far as the funds at its disposal permit, make due provision for all matters transferred to its control and administration under this section.

It shall be the duty of the District Board to enforce the responsibility imposed on a Local Board by this section.

102. Except as otherwise provided by this Act, a Local Board shall not incur expenses, or undertake liabilities, to any amount exceeding the limit imposed by the District Board.

*Except as otherwise provided by this Act.*—This, apparently, refers to the preceding section, and possibly also to section 145, which empowers all local authorities to make compensation to persons sustaining damage by reason of the exercise of the powers conferred by this Act.



103. A Local Board shall exercise powers of supervision and control over all Union Committees within the area under its authority, and it shall be the duty of the Local Board to procure and submit, in such form as the District Board may prescribe, all such reports, returns, and statistics as the District Board may from time to time require.

### CHAPTER III.

#### DUTIES AND POWERS OF UNION COMMITTEES.

104. A Union Committee as the agent of, and subject to the control of, the Local Board shall, within the Union, have the control and administration of, and be responsible for, all matters specified in this Chapter, except such of those matters as the Local Board may think fit to take under its direct control and administration.

India Act I of 1883, Central Provinces Local Self-Government Act, section 10.

105. Every Union Committee shall submit annually to the Local Board, on or before such date as the Local Board may appoint, an estimate of the probable expenditure of the Committee for the ensuing financial year, and an account of its receipts and expenditure for the past financial year, and shall also submit any other reports which the Local Board may from time to time require.

India Act I of 1883, section 11.

106. A Union Committee shall not incur expenses, or undertake liabilities, to any amount exceeding the limit imposed by the Local Board.

Limits on expenditure of Union Committee.

India Act I of 1883, section 12.

107. Every Union Committee shall, within such time as the Local Board may direct, forward to such Local Board a schedule of all village roads within the Union.

Union Committee to send schedule of roads to Local Board.

Such schedule shall state the length and width of the roads, the number, description, and dimensions of bridges, and such other particulars as the Local Board may require.

The width of a village road can generally only be calculated by a very rough average, as it usually varies very much.

108. All village roads within a Union, and the stones and other materials thereof, and also all erections, materials, implements, and other things provided for such roads, shall be placed under the control and administration of the Union Committee.

Village roads placed under control and administration of Union Committee.

*Control and Administration* — Compare note to section 73.

109. A Union Committee shall, so far as the Union Fund permits, from time to time cause the village roads to be maintained and repaired, and may do all things necessary for such purpose, and may

Maintenance and repair of village roads.

- (a) lay out and make new village roads ;
- (b) build and construct new bridges ;
- (c) turn, divert, discontinue or stop up any village road ; and
- (d) widen, open, enlarge or otherwise improve any such road.

Clauses (a) and (d) are of course subject to the ordinary law as regards private rights. Clause (c) would only apply to a road with regard to which a public right of way existed, and would not authorize the Committee to interfere with a private right of way. "Village road" throughout the Act must be taken to mean a village highway.

The power of diverting or stopping up a village road given by clause (c) is very necessary. The clause has probably been framed with reference to the decision in *Empress v. Beroje Nath Dey*, 1 L. R., 2 Cal., 425, where it was held that the fact that public highways were by statute vested in a municipal authority, did not authorize that authority to permanently divert or close any such highway. The clause will enable the Committee to surrender a right of way in exchange for another, which may be more direct or convenient to the public. It must be remembered, that there is a presumption that the land of a highway or waste land adjoining thereto, belongs to the owner of the soil of the adjacent land. The provisions of statutes vesting highways, or the control and administration of highways, in local authorities, are not intended to deprive persons of private rights of property in the land used for such highways. As long as the land is used as a highway, such private rights necessarily remain in abeyance. But when the land ceases to be used as a highway, full proprietary-rights accrue to the owner. — *Nihal Chand v. Azmat Ali Khan*, 1 L. R., 7 All., 362.

"While certain land formed part of a certain public thoroughfare, F had immediate access to such thoroughfare and the use of a certain drain. The Municipal Committee sold such land to M, and constructed a new thoroughfare. M used and occupied such land so as to obstruct F's access to the new thoroughfare and his use of the drain. F therefore, sued him to establish a right of access to the new thoroughfare over such land and a right to the use of such drain. *Held* that, having suffered special damage from M's acts, F had a right of action against him, and that such right was not affected by the circumstance that M had acquired his title to the land from the Municipal Committee, inasmuch as the Municipal Committee could not have dealt with the old thoroughfare to the special injury of F, and, had it closed the same, would have been bound to provide adequately for his access to the new thoroughfare and for his drainage."—*Kuzal Huk v. Maha Chand and another*, I. L. R., 1 All. 557.

110. The Local Board may, with the consent of a Union Committee, delegate to such Committee the management of so much of any road under the management of the Local Board as may be situated within such Union, and such Union Committee shall thereupon do all things necessary for the maintenance and repair of the portion of road so assigned to it, and shall be responsible to the Local Board in that behalf.

This refers to roads other than village roads, the control of which has already been made over under section 108.

111. Every Union Committee shall exercise such powers in regard to the establishment, maintenance, and management of pounds as may be transferred to it by order notified under Act XVIII of 1883.

Powers of Union Committee in respect of pounds.

Section 1 of Act XVIII of 1883 is referred to. The Act will be found *post*.

By section 56, all sums accruing within the Union under the Cattle Trespass Act, 1871, shall be credited to the Union Fund. The proceeds of all pounds will, therefore, be credited to the Fund, irrespective of the question as to whether the management has been made over under the present section.

112. Subject to any rules made by the Lieutenant-Governor under this Act, every Union Committee shall be charged with, and be responsible for, the maintenance and management of all primary schools within the Union, the appointment

Primary schools.

(subject to section thirty-six) of the gurus of such schools, and the transmission to such gurus of any rewards that may be granted by the District Board or Local Board.

Direct authority to prescribe such rules, is conferred by section 138, clause (g).

By section 36, the consent of the Local Board is necessary for all appointments, the monthly salary of which amounts to Rs. 10 or more.

*All Primary Schools*—Primary schools under public management apparently are referred to. It is not probable that there was any intention of giving the Committee any power of interference with independent *patshahas* without the consent of the gurus. This fact has been recognized by the rules prescribed. Rule 150 distinctly provides that there shall be no restriction on the establishment and maintenance of primary schools by private individuals or associations.

113. Subject to any rules made by the Lieutenant-Governor under this Act, a Union Dispensaries, Committee may, with its own consent, be charged with, and made responsible for, the maintenance, management, and visiting of any dispensary within the Union.

Direct authority to prescribe such rules, is conferred by section 138 clause (g).

114. Every Union Committee shall provide for the registration of vital statistics, births and deaths within the Union, and shall submit such returns as the Local Board may direct.

115. Every Union Committee shall provide, as far as possible, for the sanitation of the Sanitation. Union and shall make special arrangements for the sanitation of fairs and melas.

The following extract from Resolution No. 205 of the Government of India, dated 7th November 1877, may be quoted as bearing on this section:—

“Improvement in the sanitary condition of towns and villages is the best safeguard against cholera specially improvement of the water-supply, the drainage the conservancy and the habitations. It should be impressed upon the people that these matters require constant and careful attention, and that such attention should be redoubled if cholera threatens. And just as all such improvements are to be encouraged and aided as far as possible, so, on the other hand, all insanitary conditions are to be avoided. In this point of view large gatherings of people when cholera threatens are attended with great danger. Under such circumstances fairs are liable to form foci whence epidemics radiate over a wide extent of country and become the cause of death to thousands

who have not attended the fair. It must be remembered that fairs generally entail overcrowding and are often associated with privation and fatigue to travellers coming from a distance all which circumstances are favourable to disease. When cholera threatens or is actually present in the part of the province, where any fair is about to be held, the inhabitants of all districts from which the people generally congregate should be warned of the great risk they incur if the disease is severe or threatens to be so then the fair should be actually prohibited. The conservancy of fairs should at all times receive great attention, and more particularly when cholera symptoms prevail."

116. All drains and other conservancy works within the Union, which are not under the control of any other authority, shall be under the control of the Union Committee.

Drains and other conservancy works under control of Union Committee.

117. The Local Board may, with the consent of a Union Committee, delegate to such Committee the execution of any work of sanitation, drainage, or water-supply affecting the Union.

Local Board may delegate execution of works of improvement to Union Committee.

118. A Union Committee may cleanse or repair any public tank, stream, well, or drain within the Union, and charge the cost of such cleansing or repairing, which shall in no case exceed a sum of one hundred rupees, to the Union Fund, or, if such fund be not sufficient, may levy such cost from persons resident within the Union in the manner provided for the levying of the Chowkeedaree Tax under the Bengal Village Chowkeedaree Acts of 1870 and 1871, or any other Act for the time being in force.

Union Committee may cleanse or repair public tanks

By section 15 of Act VI of 1870, the assessment is to be made according to the circumstances and property of the assessee. It is provided that the amount to be assessed upon one person shall not exceed one rupee *per mensem* -- a provision which does not appear to be particularly suitable for the purpose of the present section. Persons too poor to pay half an anna a month, are to be exempted altogether. In default of payment, the amount is to be realized by distraint of any moveable property, except plough-cattle and implements of trade and agriculture (section 32).

119. Any public tank, stream, or well which the Union Committee may have cleansed or repaired under the last preceding section shall remain under the control and administration of the Union Committee; and the Union Committee may

Tanks, streams, or wells, so cleansed or repaired to remain under control of Union Committee.

by an order duly published in the village or villages in which such public tank, stream, or well is situated, set apart the same for the supply of water for drinking and culinary purposes.

A tank, stream, or well set apart under this section would obviously be a public spring or reservoir within the meaning of section 277, I P C, and any person voluntarily corrupting or fouling the same would become liable to the penalty thereby prescribed.

The following discussion took place with reference to this section when its addition to the Bill was moved in Council —

“The HON. KUMAR BAIKANTO NATI DE said he regretted he could not record his assent to the amendment proposed. Simple as it was on the face of it, there lurked within it an element of great changes to the Hindu public. It was meet and proper that public tanks should be kept sweet at the expense of the Local Fund or of the local public, but he failed to perceive the justice and propriety of converting old private tanks into public ones, and the section as worded amounted to that. The word ‘public’ had not been defined in the Bill, but he happened to know that all such tanks, as distinct from mere excavations and ponds, were consecrated by the Hindus, and the consecration service contained a clause which dedicated the water of the tank to public use. Practically, too, no one put forth any objection to free access to a private tank. The owner retained his proprietary-right to the site and the water and the fishing in it, and whenever so disposed could cause the tank to be filled up and converted to other use, but as long as it remained a tank, its water was dedicated to the use of the public. Now, did this dedication of the water make the tank public? He understood that the question had been before the law courts. On one occasion Mr. Mytton, then Magistrate of the 24-Pergunnahs, closed access to the tank in his garden, and the Sulder Court ruled that he was wrong: other cases had since arisen, and on the face of the decisions that had been given, it appeared to him that to declare that every tank on which a Union Committee had spent a couple of rupees or so belonged to the Union was practically to confiscate private property on very insufficient grounds. Some private tanks were of large extent, covering many acres of land: a few were over half a mile in area, and to take them at a cost of any sum not exceeding a hundred rupees was arbitrary in the extreme, and he could not but raise his humble voice against it.

“The HON. MR. MACAULAY said he did not understand the nature of the objection. The hon. member said that some tanks, although private property, were devoted to the use of the public. If they were so devoted, and as the Union Committee was the guardian of the public, the proposal was to give that body power to see to the good of the public. The illustration given of Mr. Mytton’s tank was different. It was a tank devoted to the use of the public which he desired to fence in, and the law very properly interfered and prevented him from doing so. Such tanks would be very proper objects for the Union Committee to take charge of.

“The motion was then put and carried.”—*April 15th, 1885.*

It is obvious that the section is by no means intended to authorize the confiscation of private rights. It is merely meant to authorize the proper regulation of a public right. The public having obtained a right of ~~water~~, the Union Committee is authorized to see that that right is exercised to the advantage of the public, and is not infringed upon. The

right of the proprietor to the property in the tank, stream or well, subject to such right of *user* and its authorized regulation remains as before. For instance, a private right of fishing if previously existing would remain unchanged. If the tank silted up and could no longer be used by the public the land would belong to the proprietor and not to the Union Committee. On the same principle it has been held that a road, the land of which belonged to a private owner, but over which the public had a right of way, reverted altogether to the proprietor on such right of way ceasing to exist by the road being closed and disused — *Nihal Chand v Asmat Ali Khan* L. L. R. 1 All, 362.

## PART IV.

### *Control*

120. It shall be the duty of the Lieutenant-Governor and of all Commissioners and Magistrates of districts, acting under the orders of the Lieutenant-Governor, to see that the proceedings of local authorities are in conformity with law and with the rules in force thereunder. The Lieutenant-Governor may, by order in writing, annul any proceeding which he considers not to be in conformity with law and with the said rules, and may do all things necessary to secure such conformity.

With reference to this chapter, the Select Committee have remarked as follows. —

"We have omitted the provision giving the Commissioner and the Magistrate of the District such of the powers of general control vested in the Lieutenant-Governor as he may confer upon them by rules. We are of opinion that the specific provisions defining their powers in regard to control are sufficient. We have considered it unnecessary to deprive the Magistrate of the District of powers in regard to inspection, suspension of the action of a local authority, and execution of works in cases of emergency when he is Chairman of the District Board. We have altered section 128 of the Bill, as preliminarily amended, so as to make it incumbent upon the Commissioner to submit to the Lieutenant-Governor copies of proceedings in those cases only in which he has confirmed, or upheld with modifications, and order of the Magistrate of the District. We have amplified the section relating to disputes so as to provide for the settlement of such matters, as far as possible, by the authorities immediately superior to the authorities concerned."

"Magistrates of Districts" in the above section apparently means "District Magistrates," and has no reference to the definition given in section 5.

"Corporations, being composed of individuals, subject to human frailties, are liable as well as private persons to deviate from the end of their institution. And for that reason the law has provided proper persons to visit, inquire into, and correct all irregularities that arise in such corporations either sole or aggregate, and whether ecclesiastical, civil, or eleemosynary." (1 *Bl. Comm.* 480.)

121. Every local authority shall at all times permit the Commissioner or the Magistrate of the district to have access to all its books, proceedings, and records.

Records to be open for inspection of Commissioner or of Magistrate of District.

"Magistrate of the District" includes an authorized subordinate Magistrate, section 5.

122. The Commissioner or the Magistrate of the district shall have power at all times to enter on and inspect, or cause to be entered on and inspected, any immoveable property occupied by, or any work in progress under the orders of, or any institution controlled by, a local authority.

Power of Commissioner or of Magistrate to inspect works.

See note to preceding section.

123. It shall be lawful for the Lieutenant-Governor to appoint an officer to be Inspector of Local Works in each Commissioner's division, or in more than one such division, and to sanction an establishment for such officer.

Appointment of Inspector of Local Works, and duties to be performed by him.

It shall be the duty of the inspector of Local Works to inspect and advise with regard to all public works under construction or repair vested in, or in charge of, any local authority within the division.

The Inspector of Local Works shall also perform such duties and exercise such powers as may be assigned to him by any rules made by the Lieutenant-Governor under this Act.

The Inspector of Local Works may at all times enter upon, or cause to be entered upon, any immoveable property belonging to any local authority in the division, or any work in progress under its direction, and may require it to furnish such statements, estimates, and reports as he



thinks fit. A report of every inspection shall be prepared, and a copy thereof forwarded to the District Board concerned, through the Magistrate of the district.

In all matters of professional detail the local authority shall be guided by the report of the Inspector of Local Works.

Direct authority to prescribe the rules referred to in the third para. is conferred by section 138, clause (1). The rules now in force will be found *post*.

It will be observed that the Act contains no provision for the contribution from the District Fund of any portion of the pay of the Inspector of Local Works. On this point the following extract, from the Further Report of the Select Committee, may be quoted —

‘ We have omitted from this Part the section relating to the appointment and payment of Inspectors of Local Works. Under the present law Divisional Superintendents of Works are only appointed on the application of the District Boards concerned. We consider that, if such an officer is now paid for by the District Board, he should be appointed by them. As, however, he will principally be required to aid the Commissioner in the exercise of his power of control, this does not appear to be practicable, and having regard to the large interests of Government in supervising the repairs of provincial roads and buildings made over to the charge of the District Boards, we are of opinion that Government should provide officers for this duty from its own staff, and that provision for the exercise of his functions can best be made under the Part relating to Control.’

#### 124. The Magistrate of the district, or the Commissioner, may, by order in writing, suspend the execution of any order or resolution of a local authority within the jurisdiction of such Magistrate or Commissioner, or the doing of any act which is about to be done, or is being done, by such local authority, if in his opinion the execution of the resolution or order, or the doing of the act, is likely to cause injury or annoyance to the public, or to any class or body of persons, or to lead to a breach of the peace.

Power to suspend action of local authorities by Magistrate of district and Commissioner.

suspend the execution of any order or resolution of a local authority within the jurisdiction of such Magistrate or

Commissioner, or the doing of any act which is about to be done, or is being done, by such local authority, if in his opinion the execution of the resolution or order, or the doing of the act, is likely to cause injury or annoyance to the public, or to any class or body of persons, or to lead to a breach of the peace.

Punjab District Boards Act, India Act XX of 1883, section 45.

This section is subject to the provisions of sections 127-130.

By section 5, “local authority” is defined to mean “any District Board or Local Board, Joint Committee, Union Committee, or Joint Union Committee constituted under this Act.” It follows, therefore, that this section confers powers upon Commissioners and Magistrates in regard to the inferior local authorities as well with regard to District Boards. Section 130, however, enacts that the powers conferred upon Commissioners and Magistrates in regard to District Boards by this section, shall be exercised in respect of a Union Committee by the Local Board, and in

respect of a Local Board by the District Board. Compare note to section 130.

Although "Magistrate of the District" is defined in section 5 to include a subordinate Magistrate to whom powers have been delegated, the words "within the jurisdiction of such Magistrate" obviously qualify this provision.

## 125. When the Commissioner is informed, on complaint

Power to provide for performance of duties in case of default by District Board.

made or otherwise, that a District Board has made default in performing any duty imposed on it by or under this Act, the Commissioner, if satisfied after due enquiry that such District Board has made default as alleged, may, by order in writing, fix a period for the performance of that duty.

If that duty is not performed within the period so fixed, the Commissioner may appoint some person to perform it, and may direct that the expense of performing it, with a reasonable remuneration to the person appointed to perform it, shall be forthwith paid by the District Board.

If the expense and remuneration are not so paid, the Commissioner may make an order directing the person having the custody of the balance of the District Fund to pay the expense and remuneration, or as much thereof as is possible, from that balance: and such person shall make payment accordingly.

India Act XX of 1883, section 47.

## 126. In cases of emergency the Magistrate of the dis-

Extraordinary powers in case of emergency.

trict may provide for the execution of any work, or the doing of any act, which a local authority is empowered to execute or do, and the immediate execution or doing of which is in his opinion necessary for the service or safety of the public, and may direct that the expense of executing the work or doing the act, with a reasonable remuneration to the person appointed to execute or do it, shall be forthwith paid by the District Board.

If the expense and remuneration are not so paid, the Magistrate may make an order directing the person having the custody of the balance of the District Fund to pay the expense and remuneration, or as much thereof as is possible,

from that balance; and such person shall make payment accordingly.

India Act XX of 1883, section 46

By section 130, the powers conferred upon the Magistrate of the district by this section may be exercised by the District Board in respect of a Local Board, and by the Local Board in respect of a Union Committee.

127. When the Magistrate of the district makes any order under sections one hundred and twenty-four or one hundred and twenty-six, he shall forthwith submit to the Commissioner a copy of the order, with a statement of his reasons for making it, and with any explanation which the local authority concerned may wish to offer, and the Commissioner may thereupon confirm, modify, or rescind the order.

128. In every case under the last preceding section in which the Commissioner confirms or modifies any order, he shall forthwith submit to the Lieutenant-Governor a copy of the proceedings, and the Lieutenant-Governor may thereupon confirm, modify, or rescind the order of the Commissioner.

129. When the Commissioner makes any order under sections one hundred and twenty-four or one hundred and twenty-five, he shall forthwith submit to the Lieutenant-Governor a copy of the order, with a statement of his reasons for making it, and with any explanation which the local authority concerned may wish to offer. And the Lieutenant-Governor may thereupon confirm, modify, or rescind the order.

130. All powers conferred upon Commissioners and Magistrates of districts in regard to District Boards by sections one hundred and twenty-four and one hundred and twenty-six, shall be exercised in respect of a Union Committee by the Local Board, and in respect of a Local Board by the District Board.

When a Local Board makes any order under this section, it shall forthwith submit to the District Board a copy of the order with a statement of its reasons for making it, and with any explanation which the Union Committee concerned may wish to offer. The District Board may thereupon confirm, modify, or rescind the order.

When a District Board makes any order under this section, it shall forthwith submit to the Magistrate of the district, for submission to the Commissioner, a copy of the order, with a statement of its reasons for making it, and with any explanation which the Local Board may wish to offer. If the Commissioner is dissatisfied with the order, he may report the matter to the Lieutenant-Governor, who may thereupon confirm, modify, or rescind the order.

This section, apparently, overlooks the fact that sections 124 and 126 do not confer powers upon Magistrates and Commissioners with regard to District Boards only, but with regard to all local authorities. For "District Boards," in the first para., we must therefore read "local authorities." Taking the three sections together, the result appears to be that the Commissioner, Magistrate, or District Board may exercise the powers specified in section 124 with regard to a Local Board, and the Commissioner, Magistrate, or Local Board may exercise them in the case of a Union Committee. As regards the powers specified in section 126, they may be exercised by the Magistrate or District Board in the case of a Local Board; and by the Magistrate or Local Board in the case of a Union Committee.

**131.** If a District Board or Local Board is not competent to perform, or persistently makes default in the performance of the duties imposed on it by or under this or any other Act, or exceeds or abuses its powers, the Lieutenant-Governor may, by notification specifying the reason for so doing, supersede such District Board or Local Board for a period to be specified in such notification.

Power of Lieutenant-Governor to supersede District Board or Local Board in case of incompetency and wilful neglect of duty.

India Act XX of 1883, section 51.

**132.** When a District Board or Local Board is superseded under the last preceding section, the following consequences shall ensue—

Consequences of supersession,

(a) All members constituting the District Board or Local Board shall from the date of the notification vacate their offices as such members.

- (b) All powers and duties of the District Board or Local Board may, until such District Board or Local Board is reconstituted, be exercised and performed by such person or persons as the Lieutenant-Governor may from time to time appoint in that behalf.
- (c) When a District Board is superseded, all property vested in it shall, pending the reconstitution of the Board, be vested in the Lieutenant-Governor.

On the expiration of the period of supersession specified in the notification, the Board shall be re-established, and the persons who vacated their offices under clause (a) shall be eligible for appointment or election.

Nevertheless it shall be lawful for the Lieutenant-Governor to direct that a Local Board, re-established under this section, shall consist entirely of appointed members, although such Local Board may have been established in a district mentioned in the third Schedule of this Act.

133. If a dispute arises between two or more Union Committees within the area under the authority of a Local Board, the matter shall be referred to the Local Board, and the decision of such Local Board upon the matter so referred shall be final and binding.

Disputes between two or more Union Committees to be referred to Local Board.

134. If a dispute arises between two or more Union Committees within the areas under the authority of different Local Boards, the matter shall be referred to the Local Boards; and if the Local Boards cannot agree, to the District Board, and the decision of such Local Boards or District Board, as the case may be, upon the matter so referred, shall be final and binding.

Disputes between two or more Union Committees under the authority of different Local Boards to be referred to District Board when Local Boards cannot agree.

135. If a dispute arises between two or more Local Boards within the area under the authority of a District Board, the matter shall be referred to the District Board, and the decision of such

Disputes between two or more Local Boards to be referred to District Board.

District Board upon the matter so referred shall be final and binding.

India Act XX of 1883, section 52.

136. If a dispute arises between a municipal authority or authorities and a local authority or authorities within the same district, the matter shall be referred to the Magistrate of the district, and the decision of the Magistrate upon the matter so referred shall be final and binding :

Disputes between municipal authorities and local authorities in the same district to be referred to Magistrate of district.

Provided that, if the Magistrate is a member of one of the authorities concerned, his functions under this section shall be discharged by the Commissioner.

137. If any dispute, for the decision of which this Act does not otherwise provide, arises between two or more local authorities, or between a local authority or authorities, and a municipal authority or authorities, the matter shall be referred—

Decision of disputes not otherwise provided for.

(a) to the Commissioner or Commissioners of the division or divisions, if the local authorities concerned are in different districts ; and

(b) to the Lieutenant-Governor, if the local authorities concerned are in different divisions and the Commissioners of those divisions cannot agree.

And the decision of the Commissioner or Commissioners, or of the Lieutenant-Governor, as the case may be, upon the matter so referred shall be final and binding.

India Act XX of 1883, section 54.

138. It shall be lawful for the Lieutenant-Governor to make rules, consistent with this Act, for any District Board or Local Board or Union Committee for the purposes of—

Power of Lieutenant-Governor to make rules.

(a) determining the mode and time of appointment or election of members of Boards and Committees, the term of office, and the qualifications and disqualifications of such members and the quali-

fications and disqualifications and the registration of voters and candidates, and generally for regulating all elections under this Act ;

See sections 9, 13, 16, 19, and 39.

- (b) regulating the conduct of proceedings of Boards and Committees, including the manner in which notices of a meeting shall be given, the fixing of a quorum, the due record of proceedings, and the language in which business shall be transacted ;

See section 32.

- (c) fixing the time within which a Chairman or Vice-Chairman may be elected ;

See sections 25, 26, 29.

- (d) regulating the powers of District Boards to transfer property ;

See section 20.

- (e) regulating the powers of Boards and Committees to contract and do other things necessary for the purposes of their constitution and the mode of executing contracts ;

See section 20.

- (f) determining the immediate offices, if any, through which correspondence between Boards and Committees, or members of Boards and Committees, and the Lieutenant-Governor or his officers shall pass ;

See section 17.

- (g) prescribing the qualifications of candidates for employment under section thirty-three ;
- (h) prescribing the times for holding meetings and for submitting statements, estimates, reports or accounts under sections forty-six and forty-seven ;

See note to section 47.

- (i) prescribing forms for statements, estimates, and accounts, and regulating the keeping, checking and publication of such accounts and the manner of periodical audit under sections fifty-four and fifty-five ;
- (j) regulating the maintenance and management of schools under sections sixty-two, sixty-three and sixty-four, the construction and repair of buildings connected therewith, and the appointment of masters and assistant masters, and the proper distribution of funds transferred to District Boards under section sixty-five ;
- (k) regulating the control and administration of dispensaries, hospitals, and places of reception for the sick, the construction and repair of buildings connected therewith, and the supply of medicines and medical assistance for the poorer inhabitants of the district ;

See sections 66—71.

- (l) prescribing the procedure to be adopted in the appointment of the Engineer to the District Board under section eighty-four, and regulating the performance and exercise of the duties and powers of such Engineer and of the Inspector of Local Works under sections eighty-five and one hundred and twenty-three, respectively ;
- (m) regulating the submission for approval of plans, designs, specifications and estimates under section eighty-six ;
- (n) regulating the duties and powers of District Boards in regard to sanitation ;

See sections 87—91.

- (o) regulating the duties of District Boards in regard to taking a census ;

See sections 97, 98.

- (p) regulating the establishment and maintenance of staging bungalows and serais, the holding of fairs and exhibitions, the offer of rewards for the destruction of noxious animals, and the carrying out of any other work likely to promote the health, comfort or convenience of the public ;

See section 100.



- (q) regulating the powers of Union Committees in regard to primary schools and dispensaries under sections one hundred and twelve and one hundred and thirteen ;
- (r) providing for the appointment and payment of auditors of the accounts of Boards and Committees ;
- (s) affording guidance to District Boards when suits or other proceedings are threatened or have been instituted by or against them in Civil Courts ; and

See sections 142, 146.

- (t) generally determining the relations between District Boards, Local Boards and Union Committees, and for the guidance of Boards and Committees and Government officers in all matters connected with the carrying out of the provisions of this Act.

And may from time to time repeal or alter such rules.

Rules made under this section shall be published in such manner as the Lieutenant-Governor may direct, and shall thereupon have the force of law ;

and no rules under clause (a) shall come into operation until three months after they have been published as aforesaid.

India Act XX of 1883, section 55.

This section is subject to the provisions of section 143.

The rules framed under this section will be found *post*.

### *Bye-laws.*

139. Every District Board or Local Board, empowered in this behalf by the Lieutenant-Governor, may make bye-laws for carrying out all or any of the purposes of this Act.

Bye-laws made under this section shall have the force of law when confirmed by the Lieutenant-Governor and published in such manner and for such time as the Lieutenant-Governor may direct.

India Act XX of 1883, section 56.

This section is subject to the provisions of section 143

"Bye-law," or perhaps more correctly 'by-law,' is derived from the Scandinavian "by," a town or borough, and therefore, originally meant a town or borough law. It afterwards came to mean a rule or law passed by any Corporation. Wharton defines bye-laws as "the rules, regulations, and constitutions of Corporations for the government of their members." Blackstone remarks, that it is one of the inherent rights of Corporations "to make bye-laws or private statutes for the better government of the Corporation, which are binding on themselves, unless contrary to the law of the land, when they are void. This is also included by law in the very act of incorporation, for as natural reason is given to the natural body for the governing it, so by-laws or statutes are a sort of political reason to govern the body politic."—1 *Bl. Com.*, 476 "And this is held to be a right so much of course, that when a charter of incorporation gave to a select body of the members a power to make bye-laws as to certain specified matters, it was held that the body at large was never theless at liberty to legislate with regard to all matters not so specified"—1 *Steph. Com.*, 13.

Grant in his treatise on the Law of Corporations remarks as follows.

"Where it is necessary for the accomplishment of the objects of their incorporation, a body politic has as an incident to it, the power of making bye-laws, and of enforcing them by penalties; and such bye-laws in the case of Municipal Corporations, and of other corporations entrusted with local, popular, or territorial government, will bind both members and strangers, and not members of the Corporation only."

"A bye-law is a rule obligatory on a body of persons or over a particular district, not being at variance with the general laws of the realm, and being reasonable and adapted to the purposes of the Corporation, and any rule or ordinance of a permanent character, which a corporation is empowered to make either by the common or statute law."

By the common law of England "the general rule is that no bye-law will be good in any Court of law or equity which is repugnant to, or inconsistent with, the laws of the land in any one instance."—*Ibid.* It must moreover be reasonable. "A bye-law, if unreasonable, will be held to be bad, although it may have been duly passed and notified to the proper authorities, and not objected to by them"—*Ibid.*

In *Hopkins v. Mayor of Swansea*, 4 M. & W., 621, 640, Lord Abinger remarked that "the bye-law has the same effect within its limits, and with respect to the persons upon whom it lawfully operates, as an Act of Parliament has upon the subjects at large."

A bye-law levying tolls or fees of any kind would be bad. "So a bye-law may levy a toll or tallage on the members of the Corporation towards the necessary expenses of the Corporation; though clearly a bye-law to levy money of the subjects generally would be bad." *Grant on Corporations*, p. 78 "It is, however, a rule of law, which has been designated a 'legal axiom' requiring no authority to be cited in support of it, that no pecuniary burden can be imposed on the subjects of this country, by whatever name it may be called, whether tax, due, rate, or toll, except upon clear and distinct legal authority, established by those who seek to impose the burden." *Broom's Legal Maxims*, 4th ed., p. 4.

The right to repeal or alter bye-laws is implied by the right to make them. Every Corporation, too, has a right, as of course, to alter or repeal the bye-laws which itself has made." 3 *Steph. Com.*, 13.

Local Self-Government Circular No. 418 T—M., of the 31st Oct. 1887, in the Municipal Department refers to this section, and is as follows:—

I am directed to invite your attention to the fact that the bye-laws,

framed by District Road Committees under section 180 of the Cess Act IX (B.C.) of 1880, for regulating the traffic and providing for the safety and convenience of passengers on the roads and other means of communication under their charge, as also for the preservation of these roads, and the trees planted on them, have lost their validity in districts in which the provisions of the Bengal Local Self-Government Act are now in force. The Lieutenant-Governor considers it necessary in the interests of the public that similar bye-laws should be made by District Boards, who have now taken the place of the late District Road Committees, under the provisions of the latter Act; and he is pleased, therefore, under section 139 of the Act, at once to empower all District and Local Boards in your Division to frame bye-laws for all or any of the purposes of the Act.

2. All bye-laws framed by District Boards under the authority now conferred on them shall, for the purposes of paragraph 1 of section 143 of the Act, be published in the manner prescribed below. The draft bye-laws, together with the notice specifying the date on or after which the bye-laws are to be taken into consideration with a view to their final adoption, shall be written in the vernacular of the district and deposited in the office of the District Board, and copies in the vernacular shall also be posted up in a conspicuous position at the following places within the district —

The offices of the District and Local Boards.

The offices of the Magistrate and Collector.

The Sub-divisional offices.

The Judge's court

The Munsiff's courts

The Sub-Registry offices.

The police-stations and outposts

The railway stations.

The principal market-places and ferry ghâts.

Post-offices.

Other public places selected by the Magistrate.

In posting up copies of the bye-laws at the places named in the above list, a public proclamation shall be made by beat of drum, at the district head-quarters and at the sub-divisional head-quarters where there are Local Boards' offices, notifying the fact that copies have been so posted up, and that the original is open to inspection in the office of the District Board. As these bye-laws have to be widely published, a period of six weeks should be allowed to the public to make any objections or suggestions in regard to them.

3. The bye-laws, when finally adopted by the District Boards after considering any objections or suggestions which may be made with respect to them and received before the date specified in the notice, should be submitted, through the Legal Remembrancer, for confirmation by the Lieutenant-Governor under section 139, paragraph 2, of the Act.

4. A similar course should be adopted in regard to the bye-laws to be framed by the Local Boards under section 139 of the Act. Copies of the draft bye-laws need, however, be posted up only at those places included in the list in paragraph 2 which may lie within the sub-division in which the respective Local Boards are formed. All bye-laws made by Local Boards shall be subject to the control of the District Boards to whom they are subordinate.

5. I am to request that these orders may be communicated to all District and Local Boards in your division.

140. In making a bye-law under the last preceding section, a Board may provide that a breach of the same shall be punished with fine which may extend to fifty rupees, and in the case of a continuing breach with a further fine which may extend to five rupees for every day during which the breach is continued after the offender has been convicted of such breach.

India Act XX of 1883, section 57.

"A further fine."—A very common misapprehension with regard to sections which provide for daily fines is, that a Court has the power to pass a sentence directing that, in addition to any fine or other punishment then inflicted, the accused shall pay a daily fine as long as he perseveres in the offence. Such a sentence is, however, absolutely bad in law, and obviously so, as it inflicts a penalty for an offence before it is committed. *In re Sagor Dutt*, 1 B L R., O. Cr., 41. *In re W. N. Love*, 9 B L R., App. 35; 6 Cr. R., 25 W. R.; 31 Cr. R., 21 W. R.; and several other cases in the Weekly Reporter.

141. Prosecutions under this Act for breach of bye-laws may be instituted by any Board, or by any person authorized by the Board in this behalf.

A Judge or Magistrate shall not be deemed to be, within the meaning of section five hundred and fifty-five of the Code of Criminal Procedure, a party to, or personally interested in, any case under this section, merely because he is a member of the Board.

India Act XX of 1883, section 58.

Section 555 of the Code of Criminal Procedure enacts that a Judge or Magistrate shall not, except with the permission of the Court to which an appeal would lie, try or commit for trial any case in which he is a party, or personally interested.

In a case decided on the 22nd August 1884,—*In the matter of Kharak Chand Pal (Petitioner) v. Tarak Chunder Gupta, Municipal Overseer (Opposite Party)*, 1 L R., 10 Cal., 1030, the Court, *per Prinsep, J.*, ruled as follows:—"The petitioner has been convicted under section 188 of the Penal Code of having disobeyed an order of the Municipal Commissioners of Commillah under sec. 256, Bengal Act V of 1876, dated the 29th March 1883.

On enquiry we have ascertained that the District Magistrate who tried and convicted the petitioner, was present as Chairman of the Municipal Commissioners at the meeting of the 29th March 1883, when the order was passed, the disobedience of which forms the subject of the present case.

"Section 555 of the Code of Criminal Procedure provides, that no Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested." (No permission has been

applied for in the present case.) The explanation to sec. 555 further declares that 'a Magistrate shall not be deemed to be a party, or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner.'

"That explanation, however, does not, in our opinion, apply to any case in which a Magistrate may have been personally concerned as a Municipal Commissioner in the matter which forms the subject of trial before him. It is rather intended to prevent an objection being raised that from the mere fact that the Magistrate might happen to be a Municipal Commissioner, he was necessarily disqualified from holding a trial in which some municipal matter was involved. It is a very different matter when in the present case we find that the Magistrate is practically one of the prosecutors and the judge."—*Conviction set aside.*

The question arises as to whether the above ruling would be held applicable to the case of a Magistrate trying offences against bye-laws, in the passing of which he had been personally concerned as a member of a local authority. The distinction, on the score of personal interest, between a bye-law and such a general order as the one in question, is not very obvious. It is at least open to question whether the above ruling does not carry the doctrine of disqualification by interest too far, especially as the current of the more recent English decisions appears to have set in the opposite direction. The Court followed *Sergeant v. Dale*, L. R., 2 Q. B. D., 558, a precedent of a very general nature. In a more recent case, however, *Reg. v. Handsley*, 8 Q. B. D., 383, it was held that when, by Statute, a member of the council of a borough may act as a justice of the peace in matters arising under the Act (34 and 35 Vict. c. 151), in order to disqualify him from so acting, it is not sufficient to show that, as a member of the council, he has a pecuniary interest in the result of the information or complaint, or that the corporation of which he is a member are the prosecutors; but it must be established that he has such a 'substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter.'

The Court in this case (*Reg. v. Handsley*) intimated their disapproval of *Reg. v. Gibbon*, 6 Q. B. D., 168, the facts in which were as follows: By a Local Improvement Act the corporation was made the authority for the execution of the Act with power to direct prosecutions for this purpose. An information for an offence under the Act having been preferred by an officer on behalf of the corporation, a summons was issued upon it by a Justice, who was also an alderman and member of the corporation, but came on for hearing before Justices, none of whom were connected with the corporation. *Held*, notwithstanding, that such Justices could not proceed with the hearing of the summons, for it had been issued by one who was virtually prosecutor.

In *Rea v. Milledge*, 4 Q. B. D., 332, and *Reg. v. Lee*, 9 Q. B. D., 394, it was held that when a councillor has taken part in passing a resolution directing a prosecution, he is disqualified from acting as a Justice in respect thereof. These rulings do not appear to necessarily conflict with *Reg. v. Handsley*, above cited.

In *Reg. v. Justices of Great Yarmouth*, 8 Q. B. D., 525, the Mayor of Yarmouth was the Chairman of the Magistrates at a special sessions for appeals against poor rates, and was himself an appellant in one of the cases. After taking part in the decision of the other cases, he left the bench, when his own case came on, and conducted it himself. On a *certiorari* bringing up all the orders for the purpose of quashing them, *held*, the Chairman being a litigant in a case similar to the other cases

before the Court, was disqualified from acting as a Justice, and that the orders were bad. In this case the disqualification arose out of a personal and pecuniary interest.

Another case in which it was held that interest is not a disqualification unless it is sufficient to cause a real bias, is *Reg. v. Mayor and Justices of Deal*, 45 L. T. N. S., 439. In that case the petitioner had been convicted and fined for cruelty to a horse upon the prosecution of an officer of the Society for the Prevention of Cruelty to Animals. Some of the Justices who took part in the conviction were subscribers to a branch of the said Society. *Held*, upon a rule for a *certiorari*, that there was nothing in these facts to create a real bias in the minds of the Justices which could amount to a disqualifying interest.

See Rawlinson's Municipal Corporations Act, eighth edition, p. 246, where the strict rule of disqualification is spoken of as the "old rule."

A conviction for an offence against a bye-law, tried before a Bench of Magistrates, which included a salaried officer of the Board, would be bad. *Wood v. Municipality of Calcutta*, I. L. R., 8 Cal., 891; *Nobin Krishna Mukerjee v. The Chairman of the Suburban Municipality*, I. L. R., 10 Cal., 194.

### Miscellaneous Provisions.

142. No person shall be liable for the loss, waste or misapplication of any money or other property belonging to the District Board or Union Committee, unless such loss, waste or misapplication is a direct consequence of his neglect or misconduct while a member of a Union Committee, Local Board, or District Board, and a suit for compensation for the same may be instituted against him, in such Court as the Lieutenant-Governor directs, by the District Board with the sanction of the Lieutenant-Governor or by the Secretary of State for India in Council.

India Act XX of 1883, section 59.

The following ruling *per Macpherson, J.*, in *Sunder Lall v. Dr. N. B. Bullie and another*, 287 C. R., 24 W. R., with reference to the personal liability of Municipal Commissioners, is equally applicable to members of Boards or Union Committees under the present Act:

"The Judge speaks of the protection offered by the Act, which he says must be taken to extend to cases where the defendant *bonâ fide*, though erroneously, exceeds the powers given him by the Act. We are not aware of there being any special protection afforded by the Act (III, B. C., of 1864), excepting that, under sec. 22, relating to contracts made on behalf of the Commissioners, for which no Municipal Commissioner is to be personally liable. Municipal Commissioners under this Act and their servants incur no personal responsibility for what they do, so long as they act in the line of their duty. But if they do, or order to be done, that which is not within the scope of their authority, or if they are guilty of negligence or misconduct in doing that which they are empowered to do, then they render themselves personally liable for an action. That is the law in England as to Trustees and Commissioners of Public Works."

and the like, and it is equally the law here. There is no special law extending to members of municipalities which protects them so long as they act *bonâ fide*."

The law of England as to Trustees and Commissioners of Public Works referred to has been thus stated "And generally, as with all other corporations, their powers, duties, and liabilities will be determined directly or implied by the statutes and other instruments appointing them. The jurisdiction, the rights, and the responsibilities imposed upon them will belong to them but no others. For the due and careful carrying out of their authorities they must provide, and in default of this—if anything be done, directed or concurred in negligently by them, or through negligence omitted to be so done or directed—they will be answerable in damages for the injury resulting, even if they have no funds to pay such damages, and even though they are purely a public body, and deriving personally no profit or advantage whatever from their position" (*Brice on the Doctrine of Ultra Vires*, p. 231.)

"We shall briefly repeat here a most important principle of corporation law which has before been adverted to, namely, that a corporation is not responsible as a corporation for acts which, though colourably corporate acts, are not within the competency of the corporation to perform; in such case the individuals who take part in the pretended corporate acts are personally responsible. Thus when the majority concurred in placing on the corporation books a resolution libelling a Court of Justice, the individuals composing the majority were held liable to a criminal information and so in cases of contract." (*Grant on the Law of Corporations*, p. 281.)

143. The Lieutenant-Governor, before making any rules under section one hundred and thirty-eight, and a District Board or Local Board, before making any bye-laws under section one hundred and thirty-nine, shall publish, in such manner as the Lieutenant-Governor deems sufficient for giving information to persons interested, the proposed rules or bye-laws, together with a notice specifying a date on or after which the same will be taken into consideration; and shall, before making such rules or bye-laws, receive and consider any objection or suggestion which may be made by any person with respect to the same before the date so specified.

Every such rule or bye-law shall be published in the *Calcutta Gazette* in English and in such other language as the Lieutenant-Governor directs, and such publication shall be evidence that the rule or bye-law has been made as required by this section.

India Act XX of 1883, section 60.

With reference to the mode of publication, see notes to section 189.

144. If any member of a local authority, or any officer or servant maintained by or employed under a local authority, has, directly or indirectly, any share or interest in any work done by order of the local authority of which he is a member, or by which he is maintained, or under which he is employed, or in any contract with or under such local authority, he shall be liable on conviction before a Criminal Court to a fine which may extend to five hundred rupees :

Provided that the penalty herein prescribed shall not be deemed to apply by reason only of a person—

- (a) Having a share in any joint stock company which shall contract with, or be employed by, or on behalf of, the local authority ; or
- (b) having a share or interest in any newspaper in which any advertisement relating to the affairs of the local authority may be inserted ; or
- (c) holding a debenture or being otherwise concerned in any loan raised by, or on behalf of, the local authority.

Nevertheless, it shall not be lawful for a person having any share or interest, such as is described in clauses (a) and (b), to act as a member of the local authority in any matter relating to a contract or agreement between the local authority and such company or the manager or publisher of such newspaper.

Compare sec. 140 of the Cess Act, sec. 57 of the Bengal Municipal Act, and sec. 12 of the Municipal Corporations Act, 1882, 45 & 46 Vict., c. 50.

By sec. 12, clause (c), of the English Act, a person is disqualified for election as a Municipal Councillor if he "has directly or indirectly by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council." The following commentary on this clause may be quoted from Rawlinson's Municipal Corporations Act.

"The object of this clause, which is reproduced *verbatim* from sec. 28 of the Act of 1835, clearly was to prevent all dealings on the part of the council with any of its own members in their private capacity ; in other words, to prevent a member of the council, standing in the situation of a trustee for the public, from taking any share or profit out of the trust fund, or in any contract or employment, in the making or regulating of which he, as one of the council, ought to exercise a superintendence.

"The evil contemplated being evident, and the words used general, they will be construed to extend to all cases which come within the mischief intended to be guarded against, and which can fairly be



brought within the above words. Upon this principle, a person who had entered into an existing contract for profit with the council was held to be disqualified, even though, by reason of its not being under seal, he could not have sued the corporation on the contract." *Reg. v. Frances*, 18 Q. B., 526; S. C., 21 L. J. Q. B.

"The word contract, if the above view is correct, would extend to all cases of supplies of goods to the use of the borough, corporation, buildings, etc., when ordered by the council; and this, though the order be a single one of small or large amount, or relate to the supply for a year, or for a longer or shorter period."

In the case of *Reg. v. York*, 2 Q. B., 817; S. C., 2 G. & D., 105, the point was raised as to whether a lease granted by the corporation was a "contract" within the meaning of the above words. The Court expressed a decided opinion that it was, but took time to consider whether the particular lease, having been granted by the old corporation, could be said to be a contract with the council under the Act. Judgment was ultimately delivered, deciding that it was a contract with the council.

In consequence of the inconvenience arising out of this decision, the Statute 5 & 6 Vict., c. 101, was passed, by which it was enacted that the word contract as used in sec. 28 of the Act of 1835 should not extend or be construed to extend to any lease, sale or purchase of any lands, tenements or hereditaments, or to any agreement for such lease, sale or purchase, or for the loan of money, or to any security for the payment of money only. The provisions of this statute have been reproduced in the English Act of 1882, and by sec. 57 of the Bengal Municipal Act. The provision as regards loans only has been reproduced in the present Act. It appears somewhat probable that the prohibition of members of local authorities from entering into leases, sales, and purchases of lands and tenements with the local authority will be found to result in practical inconvenience. The members of a District or Local Board will often own a considerable portion of the land included within its jurisdiction. If the Board requires land for a road, pound, or school, it will not be able to purchase it, or take a lease of it from one of its members.

Where a person contracted to sell land to a Board of which he afterwards became a member before the completion of the purchase—*Held*, that he was not disqualified, the contract not being of a continuing character. *Woolley v. Kay*, 25 L. J., Ex., 351.

The Select Committee remarks as follows with regard to this section in their final report.—

"We have also amended the section prescribing a penalty on a member or servant of a local authority being interested in its contracts. Instead of declaring the offence to be one punishable under the Indian Penal Code, we have fixed a specific punishment. We have at the same time expressly saved shareholders in joint-stock companies contracting with a local authority, persons interested in newspapers publishing its advertisements, and holders of debentures or other security issued by the authority. We have decided not to exclude from the operation of this section persons professionally engaged on behalf of a local authority as legal practitioners."

*Directly or indirectly.*—The same words in sec. 28 of the Act of 1835, were held to include the case of a lease granted by the corporation to the trustee of a councillor. *Simpson v. Ready*, 12 M. & W., 736.

*To act as a Member.*—Where, by a local Paving and Lighting Act, a penalty was imposed upon any commissioner "acting as such" in any matter in which he might be personally interested, one of the commissioners, being personally interested in a footpath, attended a meeting of the commissioners, and spoke upon the mode of constructing such footpath, *held*, that this was a sufficient evidence to go to the jury of his acting as a commissioner. *Charlesworth v. Rudyard*, 1 C. M. & R., 498.

It appears to clearly follow from the tenth clause of sec. 21 of the Indian Penal Code that members of local authorities under this Act are public servants. Officers and servants of a local authority, whose duties bring them under the clause in question, will also be public servants. The clause declares the following classes of persons to be public servants—"Every officer whose duty it is, as such officer, to take receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district."

145. Every local authority may make compensation out of the District or Union Funds respectively to any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act.

"Damage" is defined by Wharton to be "a loss or injury by the fault of another, *e. g.*, by an unlawful act or omission, any hurt or hindrance that a person receives in his estate; also the compensation to be fixed by the jury when they find a verdict for the plaintiff." The principal object of the section appears to be to give local authorities the power of compromising civil suits to recover damages which may be brought against them. The next section provides that they must always have an opportunity of so doing. It does not appear that the section is intended to confer a power of giving compensation in cases of *damnum absque injuria* where no action would ordinarily lie.

By the Railway Clauses Consolidation Act 1845, sec. 6, it is provided that the company shall make full compensation for all damages sustained by reason of the exercise in regard to matters specified of the powers vested in the company. In *Ricket v. Metropolitan Railway Company* (L. R., 2 H. L., 175), it was held "that no case comes within the Statute unless when some damage has been occasioned . . . in respect of which, but for the Statute, the complaining party might have maintained an action . . . Any other construction would open the door to claims of so wide and indefinite a character as could not have been in the contemplation of the Legislature." *Semble*, therefore, that the present section would apply to cases where, in consequence of the statutory powers not having been properly exercised, or having been exceeded, an action would lie, and also to cases where damage had been occasioned by the proper exercise of the statutory powers, for which an action would lie save for their existence. Compare the concluding portion of the note to the next section.

## 146. No suit shall be brought against the members of

No action to be brought against the members of boards and Committees or their officers until after one month's notice of cause of action.

any District Board, Local Board, or Union Committee, or any of their officers, or any person acting under their direction, for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of such Board or Committee, and also (if the suit is intended to be brought against any officer of the said Board or Committee, or any person acting under their direction) at the place of abode of the person against whom such suit is intended to be brought, stating the cause of action and the name and place of abode of the person who intends to bring the suit;

And unless such notice be proved, the Court shall find for the defendant.

Every such action shall be commenced within three months next after the accrual of the cause of action, and not afterwards.

If any such person to whom any such notice is given shall, before suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

To what classes of suits similarly worded provisions in other Acts apply, is a point which has given rise to a considerable amount of judicial discussion, and to some conflicting decisions. Thus, in *Poorno Chunder Roy v. Balfour*, 535 C. R., 9 W. R., Bayley, J., held, that similar provisions contained in sec. 87 of Act III of 1864 applied to a suit to recover possession of land. Phear, J., questioned this, but concurred in dismissing the suit on other grounds. In *Abhayanath Bose v. The Chairman of the Municipal Committee of Krishnaghar*, 92 C. R., 7 W. R., Norman, J., held, that the same section applied to a suit brought to restrain the Commissioners from interfering with a road claimed to be a private one. In *Prioe v. Khilal Chandra Ghose*, 5 B. L. R., App., 50, it was held that the same section did not apply to suits to recover possession of immoveable property, but only to actions for damages. In *The Municipal Committee of Moradabad v. Chattri Singh*, I. L. R., 1 All., 269, a similar view was taken. In *Mayandi v. Meghahae*, I. L. R., 2 Mad., 124, it was held that a similar provision in Madras Act III of 1871 (sec. 68) did not apply to a suit to recover money due under a contract, a breach of a contract not being a *thing done* under the Act. In *Manni Kasanudhan v. Crooke*, I. L. R., 2 All., 298, it was held that such provisions only apply to suits in which relief of a pecuniary nature is claimed for something done under the Act, and for which the persons performing them are personally liable for damages.

It may be now accepted as established law that the provisions in question only apply to suits arising out of a pecuniary claim for acts done by Boards or Committees and their subordinates, in excess of their statutory powers.

The leading Bengal ruling on the subject will be found in the Full Bench decision in *Chunder Sekur Bandopadhyaya v Obhoy Churn Bagehi*, I. L. R., 6 Cal., 8, from which the following extracts may be quoted.—

“As the relief which has been decreed in these suits is for the specific recovery of land, irrespective of any damages for the plaintiff's dispossession, we consider that the 87th section of Bengal Act III of 1864 does not apply

“That section, as it seems to us, is applicable only in those cases where the plaintiff claims damages or compensation for some wrongful act committed by the Commissioners or their officers in the exercise, or the honestly supposed exercise, of their statutory powers.

“The notice in the earlier part of the section is meant to give the defendant the opportunity of making some pecuniary amends for the wrong without incurring the cost of litigation.”

In a recent Bombay case reported in I. L. R., 8 Bom., 421, a somewhat wider interpretation is placed on a similar provision in Bombay Act VI of 1873. It was held that “Section 86 of the Act is not confined to an action for damages, but is applicable to every claim of a pecuniary nature arising out of the acts of Municipal bodies or officers, who, in the *bonâ fide* discharge of their public duties, may have committed illegalities not justified by their powers,”

Boards or Committees are entitled to the notice referred to in this section only when they have been acting *bonâ fide*, in the belief that they were exercising powers given to them by the Act. Where their proceedings are not *bonâ fide*, and are only done colorably under cover of the Act, they are not entitled to any notice. *Gopee Kishen Gosain v. Ryland*, 279 C. R., 9 W. R.

A distinct notice of action is absolutely necessary. A notice objecting to and asking for reconsideration of the order complained against is not sufficient. *Abhayanath Bose v. Chairman of the Municipal Committee of Krishnagpur*, 92 C. R., 7 W. R.

No cause of action will be allowed to be raised in a suit to which this section applies, unless disclosed in the notice of action required to be given. *Ultman and others v. The Justices of the Peace for the Town of Calcutta*, 8 B. L. R., 265.

*Anything done under this Act.*—In the English Municipal Corporations Act, 1882, sec. 226, the words used are “for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act.” In a memorandum prefixed to the Bill when introduced into Parliament, it was stated that the words in italics had been inserted with reference to the ruling in *King v. Burrell*, 12 A. & E., 460. In that case it was held that a notice of action, in a suit for an omission or neglect was not necessary under sec. 135 of the Act of 1835, as, by that section, such notice was required only in actions for anything *done* in pursuance of the Act. This ruling, if correct, is evidently applicable to the present section. It seems, however, to have been differed from in *Wilson v. Mayor of Halifax*, L. R., 3 Ex., 114. See Rawlinson's Municipal Corporations Act, 8th edition, page 314.

It is important to notice that when duties and powers are conferred by Statute, no action will lie for damages resulting from the exercise of those powers or the performance of those duties, unless there has been negligence in such exercise or performance. Thus it has been more than once held that a Railway Company is not liable, without proof of negligence, to damages for injury caused by sparks from a locomotive engine, as under its statutory powers it is authorized to run locomotive

engines. *Halford v. East Indian Railway Company*, 14 B. L. R., 1. But if it neglects to avail itself of all such contrivances as are in known practical use to prevent the emission of sparks from engines, it will be responsible for such neglect. *Addison on Torts*, 5th edition, 342. On the same principle it was held that a corporation, authorized by Statute to make excavations for drainage purposes, was not liable to damages thereby caused to a neighbouring house, when it had entrusted the execution of the work to skilled and competent contractors. *Ullman and others v. The Justices of the Peace for the Town of Calcutta*, 8 B. L. R., 265.

### FIRST SCHEDULE.

(SEE SECTION 2.)

Number and year.	Subject.	Extent of repeal.
Bengal Act IX of 1880.	To amend and consolidate the law relating to rating for the construction, charges, and maintenance of district communications and works of public utility and of provincial public works.	Sections 110 to 181, both inclusive. Section 182, clauses (a), (b), (c), (e), (g) and (h).

### SECOND SCHEDULE.

(SEE SECTION 2.)

Number and year.	Subject.	Extent of amendment.
Bengal Act IX of 1880.	To amend and consolidate the law relating to rating for the construction, charges, and maintenance of district communications and works of public utility and of provincial public works.	In section 4, the following definitions shall be substituted for the definition of "The Committee"— "District Board" means the Board constituted under the provisions of the Bengal Local Self-Government Act of 1885. "District Fund" means the Fund formed under section fifty-two of the Bengal Local Self-Government Act of 1885.

SECOND SCHEDULE — *Contd.*

(SEE SECTION 2.)

Number and year.	Extent of amendment.
Bengal Act IX of 1880.	<p>In section 9, the words " and, together with other assets of such fund, shall be applied to the purposes mentioned in section 111 " shall be omitted.</p> <p>The following section shall be substituted for section 38 —</p> <p>" 38. The road cess for each year shall be assessed and levied in each district as provided in section 6, and (subject to the maximum rate in that section mentioned) at such rate as may be determined for such year by the District Board."</p> <p>In section 40, omit the words " as provided in section 155."</p> <p>In sections 82 and 83 the words " District Road Funds " and " District Fund " shall be substituted for the words " Committees " and " Committee " respectively.</p> <p>In section 98, the words " District Road Fund " shall be substituted for the words " District Road Committee."</p> <p>In section 108, the words</p> <p>" and of all sums whatsoever which may be at the disposal of the District Road Committee as hereinafter appointed "</p> <p>shall be omitted.</p> <p>The following new section shall be substituted for section 109 :—</p> <p>" 109. The District Road Fund of every district shall be applicable to the following objects and in the following order :—</p> <p><i>Firstly.</i>—To the payment of the cost of establishments entertained and expenses incurred by the Collector under section 91.</p> <p><i>Secondly.</i>—To the indemnification of the Collector, with the sanction of the Commissioner, for any other costs or damages which he may have incurred, or for which he may have become liable, in the course of the proceedings for the assessment and collection of the cesses under this Act.</p> <p>And the balance, after payment of such expenses, shall be credited to the District Fund of the district."</p>

## THIRD SCHEDULE.

(SEE SECTIONS 6 AND 9.)

*Districts in every sub-division of which a Local Board shall be established.*

24-Pergunnahs.	Khoolna.	Midnapore.	Furreedpore.
Nuddea.	Hooghly.	Bankoora.	Rajshahye.
Moorshedabad.	Howrah.	Beerbhoom.	Pubna.
Jessore.	Burdwan.	Dacca.	Patna.

# RULES FRAMED UNDER THE ACT.

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## NOTIFICATION.

*The 15th December 1885.*—It is hereby notified, for general information, that the Lieutenant-Governor has been pleased to make the following rules under section 138 (a) of the Bengal Local Self-Government Act, III (B.C.) of 1885.

## PART I.

### ELECTION OF MEMBERS OF UNION COMMITTEES.

#### *Preliminary.*

Throughout this and the following Parts the term “Magistrate of the district” shall have the meaning prescribed by section 5 of the Act.

2. Whenever a Union, constituted under section 38 of the Act, comprises two or more villages, the Magistrate of the district shall decide in what manner such Union shall be divided into electoral wards, and the proportional number of members to be returned for each of such wards. Such arrangements shall remain in force in subsequent elections until altered by similar authority. Provided that if it is thought convenient, a Union, whether of a single or more villages, may consist of one electoral ward only.

#### *Of the Qualification of Voters.*

3. Every male person of the full age of twenty-one years, resident at the time of election within the area comprised in a Union, who has, during the year immediately preceding the election of the members of the Committee of such Union, paid one rupee or more on account of road-cess, license-tax or chowkidari-tax, or who is a member of a joint undivided family, which has during such period paid one rupee or more on account of any such cess or taxes, shall be entitled to vote at such election.

*Resident. Year. Joint undivided family*—See notes to section 9.

*Of the Qualification of Candidates.*

4. Any person qualified under the preceding rule, and who in addition can read and write, shall be qualified as a candidate for any ward in the Union.

*Of the manner of holding Elections.*

5. The Magistrate of the district shall decide at what place or places within the Union and on what date or dates the election of the members of the Union Committee shall be held.

6. The dates fixed for such elections shall be duly notified in all the villages of the Union in such manner as may appear suitable to the Magistrate of the district, and at least fourteen days beforehand ; any cost incurred in issuing notices under this rule shall be defrayed from the District Fund.

7. Each voter shall vote for the ward in which he ordinarily resides, and for no other. He may vote for as many candidates as there are members to be returned for such ward, but shall not give more than one vote for any single candidate.

8. All persons wishing to vote must be present at the elections. No votes by proxy or in writing shall be received.

9. The Magistrate of the district, or such other officer as the Magistrate of the district may depute for the purpose, shall preside at the election for each Union or portion of a Union.

10. The elections for the different wards in the Union shall be held in succession ; the proceedings in every case being commenced by the presiding officer explaining to the assembled voters the nature and objects of the election and the number of members to be returned.

11. The assembled voters of the ward shall be allowed to consult together and elect the necessary number of members in their own manner. They shall report to the presiding officer the names of the persons they have elected, and if such persons are duly qualified, and no objection is raised to the manner in which the election has been conducted, the presiding officer shall declare that they have been duly elected.

12. If the result of the election held under the preceding rule is called in question, the presiding officer shall, if he thinks it necessary, proceed to take a poll, recording the number of votes given for each candidate with his own hand. He shall then and there declare such duly qualified candidates as have a majority of votes to be duly elected.

13. If an equal number of votes is recorded in favour of two or more candidates, all of whom cannot be returned, selection shall be made from such candidates by lot in such manner as the presiding officer shall deem fit, and thereupon a candidate thus selected shall be declared to be duly returned.



14. If at any election held under these rules the number of voters of any ward shall be less than 10 per cent. of the total number of house-holders in such ward, the Commissioner may order that the election shall be held again, or may decide that the electors have failed under section 40 of the Act to elect members.

15. Objections regarding the qualifications of candidates and voters shall be summarily decided by the presiding officer, and such decision shall be final.

16. If any candidate, duly elected under the preceding rules, declines to take office, the unsuccessful candidate, if any, who received the largest number of votes, shall be held to have been elected. If there is no second candidate, the Commissioner will appoint a member under section 40 of the Act.

17. Except as provided by Rules 14 and 15, no election held under these rules shall be invalidated on any ground whatever.

18. The list of duly returned candidates shall be forwarded to the Commissioner of the Division for publication in the *Calcutta Gazette*.

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## PART II.

### ELECTION OF MEMBERS OF LOCAL BOARDS.

#### *Preliminary.*

19. When the number of members of a Local Board has been fixed by a notification issued under section 8, the Commissioner, after consultation with the Magistrate of the district, shall decide the number of members who shall be elected for each thannah within the area of such Local Board, and shall issue orders accordingly. Such orders shall be published in the *Calcutta Gazette*, at the district and sub-divisional offices, and at the head-quarters of each of the thannahs in question; and in such other manner as the Commissioner may prescribe.

20. The first election of any Local Board under these rules shall take place at such time, not being more than six months after the Act comes in force in the districts mentioned in the Third Schedule of the Act, and after the date of a notification establishing Local Boards in any other district, as the Lieutenant-Governor shall direct.

#### *Of the Qualification of Electors.*

21. Every male person of the full age of twenty-one years, resident within the area under the authority of a Local Board,

who is qualified in one of the manners following, that is to say—

- (1) Is a member of a Union Committee within such area ;
- (2) Has during the year immediately preceding such election—
  - (a) paid a sum of not less than one rupee on account of road-cess in respect of land situated either wholly or in part within such area ;
  - (b) paid license-tax in respect of a trade, dealing, or industry carried on within such area ; or
  - (c) been possessed of a clear annual income from any source of not less than two hundred and forty rupees ;
- (3) Being a member of a joint undivided family, one of the members of which is qualified to be an elector as in this rule hereinbefore provided, is a graduate or licentiate of any University, or holds a certificate as a pleader or mookhtear,

shall be entitled to vote at an election of members of such Local Board.

*Resident within the area. Year. Joint undivided family*—See notes to section 9.

### *Of the Registration of Electors.*

22. In all districts mentioned in the Third Schedule of this Act, or in which a Local Board may hereafter be established, the members of which are not appointed under section 15 of the Act, the Magistrate of the district shall cause to be prepared for each thannah within the area of a Local Board a register of persons qualified to vote. Such register shall be prepared from assessment lists, from enquiries made by persons specially deputed for the purpose, and in such other manner as may appear expedient. Such register shall, from time to time, be corrected and added to as the Magistrate of the district may direct.

23. At least two months before the date fixed for the election for any thannah, a copy of the register showing the persons qualified to vote for such thannah shall be published at suitable places within that thannah. Copies of all the thannah registers shall also be published at the sub-divisional office.

24. Any person claiming the right to vote may submit to the Magistrate of the district an application in writing for the entry of his name in the register of electors, stating distinctly in what manner he is qualified ; and all such applications, if made at least one month before the date fixed for the election, shall be duly enquired into. A notice of the claims thus made

shall be published at the thannah within one week of their presentation to the Magistrate; and all objections made to them and received at least one week before the date fixed for the elections shall be duly considered.

25. All claims to vote, and the objections thereto, shall be considered by the Magistrate of the district, and his decision shall be final.

26. The thannah list as amended, after the hearing and decision of claims and objections, shall be considered to be the final lists of persons entitled to vote at the election, and no person whose name does not appear in the thannah list shall be permitted to vote.

*Of the Qualification and the Nomination of Candidates.*

27. Every male person of the full age of twenty-one years, who is qualified in one of the manners following, that is to say—

(1) Is a member of a Union Committee within the area under the authority of the Local Board;

(2) Has during the year immediately preceding the election had his fixed place of abode within the area under the authority of such Local Board; and

(a) paid a sum of not less than five rupees on account of road-cess in respect of land situated either wholly or in part within the area under the authority of the Local Board;

(b) paid a license-tax of not less than twenty rupees in respect of a trade, dealing, or industry carried on within the area under the authority of the Local Board; or

(c) been possessed of a clear annual income from any source of not less than one thousand rupees;

(3) Being a member of a joint undivided family, one of the members of which is qualified for election under clause (1), or clause (2) (a) or (b), of this rule, is a graduate or licentiate of any University, or holds a certificate as a pleader or mookhtear,

shall be qualified for election as a member of the Local Board for any thannah under the authority of such Local Board.

*Fixed Place of Abode*—See notes to section 13.

*Year. Joint undivided family*—See notes to section 9.

28. Any elector may, for the thannah in which he is qualified to vote, nominate any qualified person as a candidate.

31. A list of the candidates who are duly qualified, and who appear to be willing to take office, shall be published at suitable places in the thannah at least one week before the date fixed for the election. No candidate whose name does not appear in such list shall be considered eligible.

*Of the manner of holding Elections.*

33. The election for each thannah shall be held at the headquarters of the thannah, or at such other place within the jurisdiction of the thannah as the Magistrate may fix. The place of election shall be publicly notified at least one month before the date fixed for election, and shall be stated in the notice issued under the next rule.

34. The date fixed for the thannah election shall be duly notified at the thannah, and at such other places as may appear suitable, at least one month beforehand.

A vernacular notice in the following form shall also, at least a fortnight before the date fixed for the election, be despatched by post, or by such other mode as may be found convenient, to every elector whose name appears in the register :—

"You are hereby informed that you are registered as a voter for the \_\_\_\_\_ thannah, and that you will be entitled to vote at the election of \_\_\_\_\_ members of the Local Board to be held at \_\_\_\_\_ on the \_\_\_\_\_ 18 \_\_\_\_."

35. An elector duly qualified under Rule 21 shall be entitled to vote for the thannah in which he ordinarily resides, and for no other. He shall be entitled to vote for as many candidates as there are vacancies for such thannah, but shall not give more than one vote for a single candidate.

36. All persons wishing to vote must be present at the election. No votes by proxy or in writing shall be received.

37. The Magistrate of the district, or such other gazetted officer as the Magistrate of the district shall depute for the purpose, shall preside at the election for each thannah.

38. The proceedings shall commence by the presiding officer, explaining the nature and objects of the meeting to the assembled voters. He shall then read out the list of candidates, and state the number of vacancies.

39. Each candidate shall then be proposed by one qualified voter, and seconded by another. Subject to the control of the presiding officer on points of order, each candidate and his proposer and seconder shall be permitted to address the assembled voters on the subject of his candidature. The names of candidates not duly proposed and seconded shall be removed from the list.

40. In the case of the number of the candidates duly proposed and seconded not being greater than the number of vacancies, the presiding officer, if he is satisfied that not less than ten per cent. of the registered voters for the thannah are present, shall at once declare such candidates to be duly elected.

41. If the number of candidates duly proposed and seconded exceeds the number of vacancies, the presiding officer shall proceed to take a poll for each candidate, recording the votes with his own hand.

42. All objections to voters shall, if possible, be summarily decided by the presiding officer after reference to the register. No objections shall be entertained other than objections arising out of matters subsequent to registration under Rule 26.

43. The presiding officer shall then and there declare such candidates as have a clear majority of votes to be duly elected. Provided that no candidate shall be declared to be duly elected unless at least ten per cent. of the registered voters of the thannah have appeared and recorded their votes.

44. If ten per cent. of the registered voters for the thannah are not present (Rule 40), or have not appeared and recorded their votes (Rule 43), the presiding officer shall report that the electors have failed under section 10 of the Act to elect the number of members for the Local Board fixed for such thannah.

45. In the case of an equal number of votes being recorded in favour of two or more candidates, all of whom cannot be returned, selection shall be made from such candidates by lot in such manner as the presiding officer shall deem fit, and thereupon a candidate thus selected shall be declared to be duly returned.

46. If any candidate, duly elected under the preceding rules, declines to take office, the unsuccessful candidate, if any, who received the largest number of votes shall be held to have been elected. If there is no unsuccessful candidate, a fresh election shall be held to fill the vacancy thus created.

47. In the event of any person being elected for two or more thannahs, such person shall be at liberty to choose which thannah he will represent, and in every other thannah for which the said person has been returned, the result of the election shall be determined under the preceding rule as if no votes had been recorded for him, and, if necessary, a fresh election will be held.

48. After all the thannah elections have been held, the list of candidates duly elected for the Local Board shall be forwarded to the Commissioner of the division for publication in the *Calcutta Gazette*.

#### *Miscellaneous.*

49. No election shall be invalidated on a point of form, provided that these rules have been substantially obeyed.

50. No election shall be invalidated on account of any irregularity whatever, unless it appears that the irregularity was such as materially to affect the results of the election.

51. No person in the employment or pay of the District or Local Board shall directly or indirectly engage in canvassing for votes, or otherwise assist in the election of any candidate, otherwise than by giving his own vote. Any breach of this rule will render him liable to dismissal.

52. All costs incurred in the preparation of the register of voters, the publication of notices, the holding of elections, or taking any other necessary action under these rules, shall be payable from the District Fund.

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### PART III.

#### ELECTION OF MEMBERS OF DISTRICT BOARDS, AND TERM OF OFFICE OF MEMBERS OF BOARDS.

##### *Election of Members of District Boards.*

53. A Local Board shall not elect members for the District Board until (a) the number of members of the District Board to be elected by such Local Board shall have been fixed by notification under section seven of the Act, and (b) the names of the elected and appointed members of the Local Board shall have been published in the *Calcutta Gazette*.

54. Within one month of the publication of the notification referred to in clause (a) of the preceding rule, or the notification referred to in clause (b) of the same, whichever be later, the Local Board shall at a meeting elect the requisite number of members for the District Board. The names of the candidates shall be submitted at the meeting, and the election shall be made by the majority of votes of the members of a Local Board present at such meeting.

55. In the case of the election or appointment of a Chairman, or the election of a Vice-Chairman, of the Local Board not having taken effect, the meeting referred to in the preceding rule shall be called by the Magistrate of the district.

56. The names of the persons elected to serve on the District Board shall be forwarded without delay to the Magistrate of the district, who shall ascertain if they are duly qualified and are willing to serve.

57. If any elected candidates decline to take office, the unsuccessful candidates, if any, who received the largest number of votes shall be declared to be duly elected. If there is no unsuccessful candidate, a fresh election shall be held to fill the vacancy thus created.

58. In the event of any person being elected by two or more Local Boards, such person shall have liberty to choose which Local Board he will represent, and, as regards every other Local Board for which such person has been returned, the result of the election shall be determined under the preceding rule as if no votes had been recorded for him, and, if necessary, a fresh election shall be held.

59. Only persons qualified for election as members of a Local Board in the district shall be qualified for election as members of the District Board.

*Note.*—As amended by notification of the 28th May 1887.

60. The names of the elected members of the District Board shall, together with the names or official designation of the appointed members, if any, be published in the *Calcutta Gazette*.

#### *Term of Office.*

61. Every member of a Local or District Board, who has been elected or appointed by name, shall vacate his office at the end of three years from the date of his election or appointment as such member.

62. The term of three years mentioned in the preceding rule shall be held to include any period which may elapse between the expiration of the said three years and the date of the next subsequent appointment or election, not being an appointment or election under the next succeeding rule.

63. If any member of a Local or District Board shall be unable to complete his full term of office, the vacancy caused by his resignation or removal or death shall be filled by the appointment or election, as the case may be, of another person; and the person so appointed or elected shall fill such vacancy for the unexpired remainder of the term for which such member would otherwise have continued in office.

64. *A. Local Boards.*—As soon as possible after the expiry of the term of office of an elected member, mentioned in Rules 61 and 62, or after the occurrence of a vacancy among elected members under Rule 63, a date for a fresh election shall be fixed by the Lieutenant-Governor, and notified in the *Calcutta Gazette*, and Rules 21 to 52 shall apply, as far as may be, to such subsequent elections.

*B. District Boards.*—As soon as possible after expiry of the term of office of an elected member, mentioned in Rules 61 and 62, or after the occurrence of a vacancy amongst elected members under Rule 63, the Magistrate of the district shall send a notice to the Local Board which has the right to elect a member to fill the vacancy, and such Board shall, within one month of the receipt of such notice, elect a member in accordance with Rules 54 to 59.

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### NOTIFICATION.

*The 11th February 1886.*—It is hereby notified, for general information, that the Lieutenant-Governor has been pleased to make the following rules under section 138 (b), (c), (d), (e), (f), (h), (i), (g), (s), and (t) of the Bengal Local Self-Government Act, III (B. C.) of 1885. These rules will form Parts, IV, V, and VI, as indicated below, of the rules made under the Act.

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# PART IV.

## PROCEEDINGS OF BOARDS.

### *Quorum.*

65. The quorum necessary for the transaction of business at a meeting of a Board shall be one-half of the total number of members of the Board, when any of the following subjects are to be disposed of at such meeting :—

- (a)—Scale of establishment and salaries (section 33).
- (b)—Rules for pensions and gratuities (section 35).
- (c)—Rate of road-cess (section 46).
- (d)—Preparation of annual budget estimate (section 47).
- (e)—Loans (section 50).
- (f)—Bye-laws (section 139).
- (g)—Election of Chairman and Vice-Chairman (sections 22, 23, 25, and 26).
- (h)—Removal of Chairman or Vice-Chairman (section 28).

For all other business the quorum shall be one-third of the total number of members of the Board.

By section 25, the quorum for a meeting of a Local Board, at which a resolution requesting the Lieutenant-Governor to appoint a Chairman is passed, shall be two-thirds of the number of members.

By section 3 of the Tramways Act, B. C. Act III of 1883, the quorum at a meeting called to consider the question of applying to the Local Government for authority to construct a tramway, is two-thirds of the number of members. This provision is clearly not superseded by the present Rule.

### *Total number of members.*

*Seemle*, that the total number of members of the Board means the total number when such Board is complete. This is the construction which has been placed upon the words "the number of the whole Council" in the Municipal Corporations Act, 1882, 45 and 46 Vict., c. 50. See Rawlinson's M. C. Act, 8th Ed., p. 350. Compare note to section 19 of the present Act.

66. If at any meeting of the Board a quorum is not present, the Chairman, or, in his absence, the Vice-Chairman, shall adjourn the meeting until such other day as he thinks fit. At such adjourned meeting any number of members present, not being less than three, exclusive of the Chairman and the Vice-Chairman, will form a quorum.

"The maintenance of a quorum during the holding of a meeting in the first instance devolves upon the Chairman. He is bound to ascertain that a quorum is present before he permits the meeting to proceed to business ; but custom, after the sitting has commenced, lays that duty

on the members of the meeting at large. This is the practice of the House of Commons itself ; though for select committees the House adopts a stricter method. The clerk of the committee is specially charged, wherever a *quorum* is not present, to bring that fact to the attention of the Chairman, who is thereupon to suspend the proceedings of the committee until a quorum be present, or to adjourn the committee to some future day. This regulation might be generally adopted, coupled with the limitation provided for the school board for London, which sanctions an interval of five minutes as a period of grace for the possible reassembly of a quorum before its presence is officially declared." *Pulgrave's Chairman's Handbook*, p. 17.

### Proceedings.

67. At least ten days' notice of all meetings shall be given to every member. Provided that the annual budget estimate shall be circulated to all the members of the Board at least a fortnight before the date fixed for its consideration. Provided also that the accidental failure of service of notice on any member shall not invalidate the proceedings of any meeting.

By section 3 of the Tramways Act, a month's notice must be given of a special meeting called to approve an application to the Local Government for the construction of a tramway. This provision is obviously not affected by the present Rule.

It should be noted that intentional omission to serve a notice upon any member *will* invalidate the proceedings. By common law, any such omission, whether intentional or not, renders the proceedings void. See the cases quoted in the notes to section 29.

68. The notice shall set forth clearly and fully the business to be transacted at the meeting, and no business other than that so stated shall be transacted except with the assent of the members present.

69. The latest day for holding a meeting under section 46 to determine the rate at which road-cess shall be levied in the district during the ensuing cess year shall be the last day of February.

As amended by notification of the 7th April 1888.

70. The Chairman, or, in his absence, the Vice-Chairman, shall preside at every meeting, and in the absence of both the Chairman and Vice-Chairman, the members present shall choose some one of their number to preside.

"*Absence of appointed Chairman.*—The absence of the appointed Chairman cannot withhold a meeting from the transaction of the business for which it has been convened. The meeting, save in case of express provision to the contrary, as a matter of course, proceeds to the election of one of its members as Chairman. Nor is any time limit usually placed on the exercise of this power when a meeting, composed of a definite number of members, is duly assembled. If the appointed Chairman be not present at the hour fixed for the meeting, the election of his substitute may be effected at once as is provided by the statutory rules for the conduct of local and school boards and boards of directors, and unless otherwise ordered, he retains the chair during that sitting, although

the appointed Chairman may subsequently join the meeting. The moment to be taken for the election of an occasional Chairman may accordingly be left to the discretion of the meeting.

"It is undesirable, however, that a meeting, where attendance is large and the occasion of special importance, should be called upon forthwith, to fill up the vacancy caused by the absence of an appointed Chairman, and the rule prescribed by the Companies Act, 1862, to meet such an emergency might generally be followed. This rule enacts that if there is no regular Chairman of a shareholders' meeting, or 'if he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be Chairman.'" *Pulgrave's Chairman's Handbook*, p. 12.

71. All questions duly submitted to a Board shall, unless otherwise provided by the Act, be decided by a majority of votes. If the votes are equal, the President shall have a second or casting vote. Provided that the President shall not have a casting vote if his own election to any office, or his own conduct to any matter connected with the Board, is in question.

*Second or Casting Vote*—"By common right the Chairman of a meeting has, if the number of votes is equal, no second or casting vote. The House of Lords, in this respect, follows 'ancient rule' and the 'non-content' lords 'have it' in case of an equality of votes. In the House of Commons, if the number should happen to be equal, the Speaker (and in Committee the Chairman of Ways and Means), who otherwise never votes, must give the casting voice. A third mode of solving this difficulty is established by the Legislature. A Chairman of municipal councils, local and school boards, vestries, and of board or general meetings of companies is empowered to give, in the first instance, his vote as a member, and then, as Chairman, a second or casting vote in case of an equality of votes. *But when a Chairman votes as a member, he should give that vote before declaring the number of votes for and against the motion.*" *Pulgrave's Chairman's Handbook*, p. 13.

The question arises, as to what would be the result of an equality in the votes for and against a motion, with regard to which the President, under this rule, might be prevented from giving a casting vote. There seems to be no reasonable doubt that, under such circumstances, the "ancient rule" referred to in the above extract must be followed, and the motion held to be lost.

72. The business at meetings of a Board shall, if all the members present know English, be conducted either in English or in the vernacular. If any of the members present do not understand English, it shall be the duty of the Chairman to have the subject-matter explained to them when the business is not conducted in the vernacular.

73. The minutes of the proceedings of a District Board shall be recorded in English. The minutes of the proceedings of a Local Board shall be recorded either in English or in the vernacular, as may be provided in its rules of business.

*Minutes of Proceedings*—See note to section 31.

74. Every motion or amendment duly made and seconded, and pressed to a division, shall be reduced to writing before being put to the vote. Every such resolution or amendment shall be recorded in full in the proceedings, together with the number and names of voters for and against it.

75. A copy of the minutes of the proceedings of any meeting of a Board shall be supplied to every member of such Board who may apply for it. An abstract of the minutes shall be affixed in some conspicuous spot accessible to the public at the place of meeting of the Board.

*Election of Chairman or Vice-Chairman.*

76. Within one month from the date on which the names of the elected members, and the names or official designations of the appointed members, of a District Board shall have been published in the *Calcutta Gazette*, the members of the Board shall, at a meeting, elect one of their number to be Vice-Chairman, and, if the Lieutenant-Governor has so directed, shall also elect one of their number to be Chairman. If the members fail to elect their Vice-Chairman or Chairman within the appointed time, the Lieutenant-Governor shall appoint the Vice-Chairman or the Chairman, as the case may be.

77. Within a week from the date upon which the names of the elected members, and the names or official designations of the appointed members, of a Local Board shall have been published in the *Calcutta Gazette*, the Magistrate shall give notice to the members of such Local Board, calling upon them to hold a meeting on a specified date to elect from among their own number a Vice-Chairman and a Chairman, unless they decide to request the Lieutenant-Governor to appoint a Chairman. If the members fail to elect the Chairman or the Vice-Chairman within the appointed time, the Lieutenant-Governor shall appoint the Chairman or the Vice-Chairman, as the case may be.

*Correspondence.*

78. Correspondence between District Boards and the Lieutenant-Governor shall, when the District Magistrate is the Chairman of the Board, pass through the Commissioner. When the District Magistrate is not the Chairman of the Board, such correspondence shall pass through the District Magistrate, who will be guided by departmental rules in conducting it.

79. Correspondence between a District Board and separate departments under the Government, such as the Medical or the Education Department, shall, unless the Magistrate of the district

is himself Chairman of the Board, pass through the Magistrate of the district. If one district only is concerned, the correspondence between the Magistrate of the district and the Department shall ordinarily be direct. But in regard to matters of unusual importance, or where more than one district is concerned, such correspondence shall pass through the Commissioner.

80. Correspondence between Local Boards and the Lieutenant-Governor or any Department under the Government shall, in every case, pass through the District Board, and shall be subject to the provisions of Rules 78 and 79 respectively.

The following circular may conveniently be quoted here:—

Finance and Commerce Department, No. 3995, dated the 22nd November 1879.

“Correspondence sent by a Local Fund Officer, or by any Government Officer acting in a capacity connected with a Local Fund, such as President or Secretary of a Local Fund Committee, is not official correspondence within the meaning of these rules, and may not be superscribed as on Her Majesty's Service.

“Service stamps may not be sold to Local Fund Officers, or to Government Officers in capacities connected with Local Funds; and the frank of such officers will not be recognized in support of service stamps.

“But nothing in this Rule shall be held to prevent the transmission on Her Majesty's Service of correspondence sent by a Government Officer acting as such, even though the correspondence may relate to the affairs of a Local Fund. For instance, the Commissioner of a Division, writing *in that capacity* to a Local Fund Officer concerning local fund affairs, may superscribe the letter on Her Majesty's Service.

“The term Local Fund, as used in this Rule, is intended to include municipalities and other similar bodies or institutions.

“This Rule will come into effect from 1st April 1880.”

### *Statements and Reports.*

81. The latest day for the submission of the statement of the requirements and probable expenditure of the District Board for the ensuing financial year shall be the 31st of December.

82. The District Magistrate, when he is not the Chairman of the Board, shall signify in writing to the Board his approval or disapproval of the statement of requirements and estimate within one month of the receipt of the same.

83. An account of the receipts and expenditure of the past financial year and a report of the proceedings of the District Board during that period shall be submitted not later than the 15th of May in each year.

84. The annual report of the District Board shall contain such particulars as the Commissioner may require.

85. The Commissioner of the division will submit to the Local Government a general report on the working of all the District Boards in his division.

86. The annual report of the Local Board shall be submitted on such date, and in such form, as the District Board may prescribe.

*Relations of Boards and Committees.*

87. The District Board shall, subject to the provisions of the Act, exercise full authority over the Local Boards within its jurisdiction in regard to the following matters :—

- (1) Application and expenditure of funds.
- (2) Execution of works and repairs.
- (3) Administration of all matters placed under its control.
- (4) Conduct of proceedings.

88. The Local Board shall, subject to the provisions of the Act, exercise similar authority over the Union Committees within its jurisdiction.

*Litigation.*

89. In all cases where a District Board desires to sue or is sued or threatened with a suit in the Civil Court, the Board shall communicate with the Superintendent and Remembrancer of Legal Affairs, and shall be guided by the existing rules for the conduct of civil suits of Government. When the District Magistrate is not the Chairman of the Board, all correspondence between the Board and the Superintendent and Remembrancer of Legal Affairs shall pass through the District Magistrate.

*General.*

90. When any suggestion in writing regarding any matter is received from the Commissioner or Magistrate of the district by the Secretary to any District or Local Board, it shall, if the Commissioner or Magistrate desire it, be laid before the next general meeting and fully considered, and a formal resolution shall be passed on the subject.

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PART V.

TRANSFER OF PROPERTY AND CONTRACTS.

*Powers to transfer Property.*

91. Property in the transfer of which a District Board is, for the purposes of these rules, to be held to be concerned, is either (a) moveable or immoveable property vested in the Board ; or (b) immoveable property placed by the Local Government under the control and administration of the Board.

92. In respect of immoveable property placed by the Act, or by the Lieutenant-Governor in accordance with the provisions of the Act, under the control and administration of the District Board, the relation of the Board to the Local Government is that of agent to principal, whether or not the rents or profits accruing from that property are credited in whole or in part to the District Fund.

*Transfer of Property vested in District Boards.*

93. No immoveable property vested in a District Board, shall, except with the previous approval of the Local Government, and in such manner and on such terms and conditions as that Government may approve, be transferred by the Board by way of sale, or by way of mortgage, charge or exchange, or otherwise than by way of lease, without a premium.

94. A lease of immoveable property vested in a District Board may be made by the Board, without a premium, on the conditions following :—

(a.) That a reasonable annual rent be reserved and made payable during the whole of the term of the lease; and

(b.) That the lease or agreement for the lease be not made for any term without the previous sanction of the Board at a meeting, or for any term exceeding five years and not exceeding thirty years, without the previous approval of the Commissioner of the division, or for any term exceeding thirty years without the previous approval of the Local Government.

95. Any moveable property vested in a Board may be transferred by the Board in any way and on any terms which the Board may, by resolution at a meeting, determine to be expedient and reasonable.

*Transfer of Property managed by District Boards as Agents of the Local Government.*

96. No immoveable property placed by the Local Government under the control and administration of a District Board shall, except with the previous sanction of the Local Government, and in such manner and on such terms and conditions as that Government may prescribe and impose, be transferred by the Board by way of sale, or by way of mortgage, charge or exchange, or otherwise than by way of lease, without a premium.

97. A lease of immoveable property placed by the Local Government under the control and administration of a District

Board may be made by the Board, without a premium, on the conditions following :—

- (a.) That a reasonable annual rent be reserved and made payable during the whole of the term of the lease, and
- (b.) That the lease or agreement for the lease be not made for any term without the previous sanction of the Board at a meeting, or for any term exceeding one year and not exceeding ten years without the previous sanction of the Collector or Deputy Commissioner of the district, or for any term exceeding ten years and not exceeding thirty years without the previous sanction of the Commissioner of the division, or for any term exceeding thirty years without the previous sanction of the Local Government.

*Mode of executing Transfers.*

98. Every transfer of immoveable property vested in a Board shall be made by an instrument under the common seal, signed by the Chairman and by two of the members of the Board, and where these rules require the previous approval of the Commissioner of the division, the fact that the transfer is signed with such approval shall be distinctly expressed.

99. Every transfer of property placed by the Local Government under the control and administration of a District Board should, unless the Local Government in any case otherwise direct, be made by an instrument under the common seal of the Board, signed by the Chairman and two of the members of the Board, and expressed to be signed on behalf of Government, and, when these rules require such sanction, expressed to be so signed with the previous sanction, as the case may be, of the Collector or Deputy Commissioner of the district, or of the Commissioner of the division, or of the Local Government.

CONTRACTS.

*Powers to Contract.*

100. Subject to the limit imposed by the District Board, a Local Board, as the agent of the District Board, may, in regard to matters which may have been transferred to its control and administration, enter into any contract or agreement in respect of a sum, or involving a value, not exceeding Rs. 500.

101. Subject to the limit imposed by the Local Board, a Union Committee, as the agent of the Local Board, may, in regard to matters under its control and administration, enter into any contract or agreement in respect of a sum, or involving a value, not exceeding Rs. 200.



*Execution.*

102. Every contract made by, or on behalf of, any Board or Union Committee in respect of a sum, or involving a value, exceeding Rs 50, shall be in writing, and shall be signed by the Chairman or Vice-Chairman of the Board, or by the Secretary, and one of the members of the Union Committee

103. Every contract or agreement entered into by any District Board in respect of a sum, or involving a value, above Rs. 500, shall be sanctioned at a meeting, be in writing, be signed by the Chairman and two other members of the District Board, and shall be sealed with the common seal of such District Board. Unless so sanctioned and executed, such contract shall not be binding on the District Board.

See notes to Section 20.

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PART VI.

## EDUCATION.

*General.*

104. Throughout the rules in this Part the term "Inspector" includes the Circle Inspector and a Joint or Assistant Inspector authorized to act on his behalf, and the term "schools under public management" includes all schools in which the course of study conforms to the standards prescribed by the Department of Public Instruction or by the University, and which are aided or inspected by the Department or regularly present pupils at the public examinations held by the Department or by the University.

105. The proceedings of all Magistrates and Educational Officers under these Rules, in relation to Joint Committees, to District and Local Boards, and to Union Committees, shall be subject to the general supervision of the Commissioner of the division, and, except where otherwise provided for in these Rules, the proceedings of each Magistrate and Educational Officer shall be subject to the supervision and control of the officer to whom, for general administrative purposes, he is subordinate.

*Section I.—Board Schools.*

106. All schools under public management, with the maintenance and management of which a District Board shall be charged, shall be deemed Board schools. They are divided into three classes,—Middle and other schools managed and maintained directly by the Board: grant-in-aid schools; and primary schools not included under either of the above heads.

107. Subject to the control of the Educational Department, and also subject to the rules hereinafter to be prescribed in regard to grant-in-aid schools and schools maintained by Union Committees, the administration of Board schools, as regards teaching and discipline, the appointment, punishment, and dismissal of masters, the fixing and payment of the masters' salaries, allowances, and pension contributions, and the grant of leave of absence to the masters, shall be conducted by the District or Local Board, or by the Committee of Management under the general control of the District or Local Board.

108. District Boards shall be liable for the payment of the stipends of Board school teachers under training in institutions provided by Government for that purpose.

109. Board schools shall be liable to inspection and examination by officers of the Educational Department, by the Commissioner of the division, and by the Magistrate of the district.

110. The bills of Board schools shall be passed by the District Board.

*Section II.—High English Schools.*

111. Whenever by order under section 64 of the Act the management and maintenance of a High English school shall have been entrusted to a Joint Committee, the following rules shall be in force.

112. Subject to the control of the Educational Department, the administration of the school as regards teaching and discipline, the fixing of the monthly, admission, and re-admission fees to be paid by the pupils, the award of prizes to the pupils, the appointment, punishment, and dismissal of masters, the fixing and payment of the masters' salaries, allowances, and pension contributions, and the grant of leave of absence to the masters shall be conducted by the Joint Committee.

113. No vacations or holidays shall be allowed to the masters and pupils of the school other than those sanctioned by Government.

114. The Joint Committee shall be bound to furnish such reports and returns as shall be from time to time required by the Educational Department and by the authorities of the University of Calcutta.

115. The Joint Committee shall conform to such regulations as the authorities of the University of Calcutta shall from time to time make with regard to the conduct of examinations.

116. The school shall be liable to inspection and examination by the Commissioner of the division, by the Magistrate

of the district, by the Inspector, and, if ordered by the Inspector, by the Deputy Inspector, by the Principal of any Government College within the Municipality in which the school is situated, and by any Fellow of the University of Calcutta. Any observations or report in regard to the school, which the Commissioner, Magistrate, Inspector, the Deputy Inspector, Principal of any Government College within the Municipality, or any Fellow of the University of Calcutta shall think fit to make, shall be forwarded in writing to the Joint Committee, and a copy shall at the same time be sent to the Director of Public Instruction.

117. The buildings of the school shall be liable to inspection by any officer of the Public Works Department whom the Government may intrust with this duty. He shall forward his remarks in writing to the Joint Committee, and shall at the same time send a copy of them to the Director of Public Instruction.

### *Section III.—Middle Schools.*

118. With regard to Middle and other schools managed and maintained directly by a District Board, the District Board shall have, within the Board's jurisdiction, the following powers:—

- (1) Of deciding where new schools shall be opened and the manner in which accommodation therefor shall be provided.
- (2) Of deciding upon the transfer or abolition of existing schools.
- (3) Of fixing the class of every such school: the selection to be made from classes recognized by the Educational Department.
- (4) Of prescribing the standard of teaching in every such school: the selection to be made from standards recognized by the Educational Department.
- (5) Of fixing, subject to such limitations as may be from time to time prescribed by the Education Department, the rate of monthly, admission, and re-admission fees to be paid by pupils in every such school.

### *Section IV.—Grant-in-Aid Schools.*

119. Nothing contained in this section shall entitle a District Board to interfere in the management of a grant-in-aid school further than is necessary to ascertain whether the terms of the grant are being complied with.

120. The Lieutenant-Governor shall have power to exempt any school or class of schools from the operation of the rules contained in this section.

121. Whenever funds shall have been made over to a District Board for the benefit of grant-in-aid schools within the district, the District Board shall be charged with and responsible for the distribution of such funds in accordance with the following rules.

122. Before giving a grant-in-aid to any school, the District Board shall require the managers of the school to which aid is proposed to be given, to sign an agreement on stamped paper to the effect that they will conduct the school in accordance with the conditions of the grant

123. The managers of any school on behalf of which application for a grant is made must appoint a Secretary to conduct their correspondence with the District Board and with the Educational Department.

124. In respect of any school, on behalf of which application for a grant is made, full information must be supplied on the following points in the form prescribed by Government :—

- (a) The pecuniary resources — permanent and temporary—  
on which the school will depend for support.
- (b.) The proposed monthly expenditure in detail
- (c.) The average number of pupils to be instructed.
- (d.) The persons who will form the Committee of Management.
- (e.) The standard of instruction: selection to be made from standards recognized by the Educational Department.
- (f.) The number and salary of the teachers.
- (g.) The amount of aid sought.
- (h.) The existence of other schools within a distance of six miles.

125. An application for a grant shall be made directly to the District Board, which may, for reasonable cause to be duly recorded, either sanction or refuse the grant in whole or in part. The Board shall send a copy of its order to the Inspector. Should the applicant, to whom a copy of the Board's order shall also be forwarded, be dissatisfied with the order of the Board, he may appeal to the Magistrate; should the Inspector be dissatisfied, he may move the Magistrate or Commissioner to take action under section 124 or 125, and may, if the officer referred to declines to take action, refer the matter for the orders of Government through the Director of Public Instruction.

126. Grants may be of two kinds—annual and special.

127. No annual grant shall exceed one-half of the income guaranteed from private sources except under special orders of Government.

128. Annual grants shall be sanctioned ordinarily for a period of three years, but the Board may, at any time, for reasons specified in writing, and which shall have reference to the Board's finances, or to the character of the teaching and discipline in the school, or to the general circumstances of education in the district, revise a grant. Against such an order of revision, an appeal and reference shall lie in the manner specified in Rule No. 125.

129. The sanction to a grant shall be given in a form to be prescribed from time to time by Government.

130. Special grants up to a maximum of half the total expenditure may be given by District Boards towards the cost of furnishing school-houses, and providing maps and other school apparatus in consideration of expenditure from private sources incurred in the establishment and equipment of schools, and on condition that the managers undertake to refund the amount of any such grant if the school obtaining it should be abolished within a period of three years.

131. Special grants may be given towards the cost of building school-houses, provided such school-houses are masonry structures.

132. Grants shall not be given to pay off debts for buildings, nor in consideration of former expenditure for building, nor for the maintenance of buildings.

133. Before a building grant is sanctioned by a District Board, the site, plans, estimates, specifications, title, and trust deeds must be approved by the Inspector.

134. In the event of a difference of opinion between a District Board and Inspector with reference to a building grant, the matter shall be referred to the Commissioner through the Magistrate.

135. Any school to which aid is given by a District Board, together with all its accounts, books and other records, shall at all times be open to inspection and examination by the officers of the Board, by the Commissioner of the division, and Magistrate of the district, and by the Inspector or Deputy Inspector, and to this end the records and accounts shall be placed in such custody that they shall always be accessible on the visit of any such examining or inspecting officer. Such inspection shall have no reference to religious instruction, but only to secular education.

136. Should the inspecting or examining officer referred to in the last preceding rule discover that the instruction or discipline in any school aided by a District Board is not efficient, or that the accounts are not properly kept, or that any of the conditions on which grants are made are not observed, he shall report the matter to the District Board. Should the Board, on such reference, omit to take the necessary action, a further reference may be made by the inspecting or examining officer to the Magistrate of the district, or to the Director in the way provided in Rule 125 above.

137. District Boards shall not, without the permission of the Director of Public Instruction, make a grant to any school, except a school for training teachers, that does not require a fee from all its pupils; provided that this rule shall not apply to scholarship-holders, who, in accordance with rules proscribed by Government, may be entitled to free tuition.

*Section V.—Primary Schools.*

138. Subject to the powers entrusted to Union Committees by section 112 of the Act, District Boards shall be charged with the duty of maintaining and managing all primary schools under public management within the district, and of determining the rates of stipends or rewards payable to the gurus and pupils of such schools, in accordance with the rules from time to time prescribed by Government.

139. District Boards shall grant rewards to the gurus and pupils of all primary schools within the district on the result of periodical examinations.

140. The arrangements for such examinations, including the appointment of examiners, shall be made by the District Board in consultation with the Inspector.

141. All payments and rewards to gurus and pupils to be granted on the result of such examinations shall be sanctioned by the Board on the report of a Sub-Inspector, confirmed by the Deputy Inspector.

142. The District Board shall, in consultation with the Deputy Inspector, make payments to chief gurus and other agents (exclusive of Sub-Inspectors) employed to inspect primary schools within the district.

143. Every District Board may make grants and contributions to primary schools under private management within the district, provided such grants and contributions be in accordance with the rules from time to time prescribed by Government.

144. Should any difference of opinion arise between the District Board and the Inspector, the matter shall be referred

either by the Inspector or by the Board through the Magistrate to the Commissioner. The Commissioner's orders on such reference shall be final as between the Inspector and the Board, unless a question of principle be involved. In matters involving questions of principle, if the Inspector be dissatisfied with the Commissioner's orders, he may refer the matter to Government through the Director of Public Instruction.

145. District Boards shall be responsible for the payment of the stipends of primary school teachers under training in institutions provided by Government for this purpose.

*Section VI.—Local Boards.*

146. In every case where a District Board shall, under section 101 of the Act, transfer the management and maintenance of any school or schools to a Local Board, the provisions contained in the preceding rules shall be generally applicable to such Local Board: provided that the District Board shall, in all cases, have a general power of control over such Local Board.

*Section VII.—Union Committees.*

147. Every primary school under public management, maintained by a Union Committee under section 112 of the Act, shall be called a Union Committee school.

2. Every Union Committee shall have the power within the Union—

- (1) Of determining the places at which Union Committee schools shall be opened.
- (2) Of deciding upon the transfer or abolition of existing Union Committee schools.
- (3) Of fixing the class of every such school: the selection to be made from classes recognized by the Educational Department.
- (4) Of prescribing the standard of instruction in every such school: the selection to be made from standards recognized by the Educational Department.
- (5) Of fixing the salary of the guru of every such school, and of removing or transferring him within the Union.
- (6) Of fixing the rate of monthly, admission, or re-admission fees payable by the pupils of every such school.

148. With reference to section 112 of the Act, by which Union Committees are declared responsible for the transmission to gurus of Union Committee schools of the rewards granted

by the District or Local Boards, it shall be the duty of each Union Committee to compel the guru of every such school to attend such examinations and gatherings, and to present his pupils at such examinations and gatherings as shall be from time to time ordered by the District or Local Board or the Deputy Inspector.

149. Every Union Committee school shall be liable to inspection and examination by officers of the Educational Department, by the Commissioner of the division, and by the Magistrate of the district.

150. Nothing in these rules shall preclude the establishment and maintenance of primary schools within the Union by private individuals or self-constituted local associations, and the pupils of all such schools shall be entitled to present themselves at all examinations for rewards and grants payable by the District Board to the pupils and gurus of primary schools.

*Section VIII.—Scholarships.*

151. Lower primary scholarships shall be awarded by the District Board in consultation with the Deputy Inspector, and a list of the scholars elected shall be forwarded to the Inspector, who will pass the bills as at present.

152. The lower primary scholarship examinations shall be conducted in every district, under the supervision of the Deputy Inspector, by examiners appointed by the District Boards in consultation with the Inspector.

153. It shall be competent to the District Board, before the award of upper primary and middle scholarships to make representations to the Inspector in favour of particular schools or tracts which it may deem deserving of special encouragement on account of their less advanced state, or for other reasons, and the Inspector shall be bound to take such representations into consideration.

154. The District Board shall be furnished every year with an abstract of the results of the upper primary and middle scholarship examinations.

*Section IX.—Finance.*

155. For the purpose of the maintenance and management of schools, the Lieutenant-Governor shall every year make over to the District Board the primary allotment of the district, the grant-in-aid allotment for Board schools falling under Section IV of these rules, a contribution to the support of those schools to be managed directly by the Boards, and any additional sum that may be granted in support of education under the control of the District Board.



156. The Deputy Inspector, under the Inspector's orders, shall prepare educational budget estimates for the district, and shall submit them to the District Board on or before the 15th July in the year immediately preceding that for which they are framed. The budget estimates, as approved by the Board, shall be forwarded by the Board to the Magistrate on or before the 15th August, and the Magistrate shall forward them with his remarks through the Commissioner to the Director of Public Instruction, in whose office they shall be due on or before the 1st of September.

157. The Inspector shall prepare budget estimates for every High English school within his circle, the management and maintenance of which shall, under section 64 of the Act, be entrusted to a Joint Committee, and shall submit them to the Joint Committee before the 1st of August in the year immediately preceding that for which the estimates are framed. The approved estimates shall be forwarded to the Director of Public Instruction on or before the 1st of September.

*Section X.—Relation of District Boards to Educational Controlling Agencies*

158. All Sub-Inspectors within the district shall submit their diaries to the District Board through the Deputy Inspector, who will forward them with his remarks.

159. Sub-Inspectors, being the executive officers of the District Board, are subject in all respects to the orders of the Board, provided that no Sub-Inspector shall be dismissed without the consent of the Director of Public Instruction. Sub-Inspectors who have been degraded or suspended shall have an appeal to the Magistrate.

160. Subject to the veto of the Inspector, Sub-Inspectors shall be appointed by the District Board. Leave may be granted to Sub-Inspectors by the District Board, in accordance with the provisions of the Civil Leave Code, notice of the fact being at the same time communicated to the Inspector. Applications for leave from Deputy Inspectors shall be forwarded through the Inspector to the Director of Public Instruction.

161. The salary and travelling bills of Sub-Inspectors shall be submitted through the Deputy Inspector to the District Board, with whom shall rest the power of passing them.

162. The Deputy Inspector shall forward to the District Board a copy of so much of the quarterly return of his inspection of schools as has reference to Board schools.

163. The correspondence of District Boards with the Director of Public Instruction shall, in cases not otherwise provided for, and subject to the provisions of Rule 79, be carried on through the Inspector.

*Section XI.—Miscellaneous.*

164. No school building or extension of a school building shall be constructed by a District Board unless the site, plans, and estimate for the same shall have been approved by the Inspector if the cost of the work is not to exceed Rs. 1,000, or by the Director of Public Instruction in any other case.

165. Inspectors may in their annual reports notice the building, library, furniture, and play-ground of middle and high schools under the management of District Boards and Joint Committees within their circles. The annual report of the Inspector shall briefly discuss the points raised by District or Local Boards, or by Committees of Management, or by District Officers during the year.

166. A quarterly statement of all payments made for educational purposes within the District on the authority of the District Board shall be forwarded by the District Board to the Inspector.

167. At the close of every financial year, the District Board shall submit to the District Magistrate a report of its operations. The Magistrate shall, on or before the 1st May, forward the same to the Inspector, and the latter shall submit it to the Director with his remarks.

168. All schools managed and maintained by District or Local Boards shall be bound to submit such annual and periodical returns as may be called for by the Educational Department, and periodical or other indents in regard to all such schools shall be submitted in forms approved by the department.

169. All schools, not being grant-in-aid schools, managed and maintained by District Boards, shall be obliged to select their text-books from a list published by the Director of Public Instruction.

J. WARE EDGAR,  
*Offg. Secy. to the Govt. of Bengal.*

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## NOTIFICATION.

*The 31st August 1886.*—It is hereby notified for general information, that the Lieutenant-Governor has been pleased to make the following rules under clause (k), section 138 of the Bengal Local Self-Government Act III (B C) of 1885.—

## PART VII.

## MEDICAL.

*Preliminary*

170. In the following rules the term "District Board," unless there be something repugnant in the context, includes a duly empowered Joint Committee constituted under section 30, and a Local Board duly empowered under section 101.

171. A District Board may appoint a Managing Committee in respect of any hospital or dispensary which is under its control and administration. Such Managing Committee may include persons who are not members of the District Board. The members shall be notified by the Commissioner in the *Calcutta Gazette*, and the Managing Committee shall exercise in respect, of the hospital or dispensary for which it is appointed such powers as may be delegated to it by the District Board.

172. No hospital or dispensary shall be established or abolished by the District Board without the previous sanction of the Commissioner. Such sanction may be either general or special.

173. No grant may be made by the District Board in aid of any hospital or dispensary which has not received the recognition of Government and been classified under the rules of the Dispensary Manual. Grants-in-aid shall be made only in accordance with the rules in the Dispensary Manual.

*Appointment, Pay, and Leave of Medical Officers.*

174. The medical officers of hospitals and dispensaries placed under the control and administration of District Boards under section 66, or provided by District Boards under sections 67 and 68, shall be appointed by the District Board, subject to the following conditions, viz. :—

(a) that any medical officer so appointed must be a duly qualified medical man licensed or certified by a recognised medical college or school, his license or diploma being subject to examination and approval by the Inspector-General of Civil Hospitals ;

(b) that he be not a dismissed servant of Government, or disqualified for his duties by age, infirmity, or character ; and

(c) that in the event of misconduct, insolvency, or professional incompetence by reason of age or otherwise being proved against him to the satisfaction of the Medical Department, he be removed from his charge on the requisition of the Inspector-General of Civil Hospitals :

Provided that on the application of the District Board, the services of a Government medical officer may be lent to such institution subject to these rules

Provided, also, that no officer of the Government establishment, who, on the date when these rules come into force in any district, is holding medical charge of any hospital or dispensary, the control and administration of which is vested in the District Board of such district, shall be removed from his appointment except with the consent of the Inspector-General of Civil Hospitals.

175. In the case of a hospital or dispensary situated at the head-quarters of a sub-division, the services of the Government medical officer in charge of the subdivision will, if the District Board desires it, be made available for the charge of the dispensary in addition to his other duties, on condition that the District Board agrees to pay him an additional allowance of Rs. 10 per mensem if he be a Civil Hospital Assistant, and of Rs. 20 per mensem if he be an Assistant-Surgeon. A Government medical subordinate of higher grade will be provided, if the District Board desires it, on payment by the District Board of the full amount by which the authorised pay and allowances of such officer may exceed the amount sanctioned by Government for the medical charge of the subdivision.

176. The Inspector-General of Civil Hospitals may at any time for departmental or other reasons, remove any Government medical subordinate whose services have been lent to a District Board, and with the consent of the District Board may appoint another medical subordinate to succeed him. In every such case, except as hereinafter provided, the transit pay and travelling allowances both of the officer transferred and of his successor shall be entirely paid by Government :

Provided that if any such officer is transferred at the request of the District Board, the transit pay and travelling allowances both of the officer transferred and of his successor shall be entirely paid by the District Board.

177. The pay to which a Government medical subordinate in substantive charge of a hospital or dispensary under the management of a District Board is entitled, is the pay of his grade in the public service. In the event of his becoming entitled, on promotion, to a higher salary than he has received, the District Board may at its option either (a) retain his services

on payment of the higher salary, or (b) apply for the services of another officer of the Government establishment as provided in Rule 174; or (c) appoint its own medical officer subject to the conditions prescribed in that rule. In no case can a Government medical subordinate in charge of a hospital or dispensary be permitted to draw a special consolidated salary or any increase to his emoluments which has not been earned by promotion.

178. Government medical subordinates in charge of hospitals and dispensaries under the management of District Boards shall be entitled to leave under the provisions of the Civil Leave Code. The leave shall be granted by the Inspector-General of Civil Hospitals after consultation with the District Board. The salary to which the officer may be entitled, while on privilege leave, shall be paid by the District Board, in all other cases it shall be paid by Government, and the travelling allowances and transit pay of a *locum tenens* under the rule shall be paid by Government.

179. Medical officers not in Government service shall be entitled to leave in accordance with the rules framed by the District Board under clause (g), section 32 of the Act. The leave shall be granted by the District Board, who shall also provide for such extra expenditure as may be incurred on account of the pay of the medical officer while on leave, and the pay and travelling allowance, if any, of his successor.

#### *Medical Stores.*

180. District Boards shall have the option of obtaining their medicines and instruments either from the Government stores or from private vendors approved by the Civil Surgeon; provided that a dispensary previously supplied by private vendors shall not indent on the Government stores without the sanction of the Inspector-General of Civil Hospitals. In either case the indents of the medical officer must be checked by the Civil Surgeon.

181. Medical stores will be supplied to District Boards from the Medical Store Department at cost-price,\* but the supply of medicines will ordinarily be confined to the articles specified in the list given in Appendix E of the Dispensary Manual, and it will be in the discretion of the Inspector-General of Civil Hospitals to sanction or disallow any demand.

182. Medical stores, if required from the Medical Store Department, must be indented for annually, and the annual indent must be submitted on the date fixed by the Civil Surgeon,

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\* Cost-price includes the percentage fixed from time to time by Government to cover expenditure on supervision and other charges of the Medical Store Department.

to enable him to submit the combined indent for his district on the date appointed by Government. Indents delayed beyond the date fixed will not be passed for supply from the Government stores.

Payment for such stores must be made within a month of the receipt of the account by the District Board.

*Funds.*

183. All subscriptions, donations, and the interest or endowments, shall be credited to the District Fund, but a separate account of hospital and dispensary receipts and expenditure shall be kept. The endowments and other invested funds of hospitals and dispensaries under the management of District Boards shall be held in the custody of the Comptroller-General apart from the District Fund. The securities shall not be sold, and these invested funds shall not be appropriated or used in any way without the sanction of Government.

*Control.*

184. The Civil Surgeon of the district shall be the visiting Superintendent of all hospitals and dispensaries under the management of District Boards.

185. The Civil Surgeon shall scrutinise the expenditure and accounts of every hospital and dispensary under the management of a District Board, and shall call the attention of the District Board to any irregularity or other circumstance which in his opinion deserves notice. The District Board shall be bound to consider any communication from the Civil Surgeon, and to afford him full information as to the conduct of the medical officer in charge and all other matters affecting the welfare of the sick and the management of the institution.

186. A copy of the proceedings of every meeting of a District Board, so far as they relate to hospitals and dispensaries, shall be forwarded to the Civil Surgeon.

187. No building for the location of a dispensary or hospital, and no extension to such building, shall be constructed by a District Board until the plan and estimate of such building or extension shall have been approved by the Civil Surgeon, or, if the work is estimated to cost more than Rs. 1,000 by the Inspector-General of Civil Hospitals.

*Miscellaneous.*

188. In all matters not expressly provided for by the foregoing rules, the rules of the Government Dispensary Manual for the time being shall, in so far as they are consistent with these rules

and with the Act, apply to all hospitals and dispensaries under the management of District Boards.

R. H. WILSON,

*Offg. Secy. to the Govt of Bengal.*

NOTE—Under Rule 188 of Part VII, the rules in this Manual become practically, so far as they relate to local authorities, a portion of the Rules prescribed under the Act. The Manual is, therefore, given in full here

## REVISED DISPENSARY MANUAL.

### PRELIMINARY.

In these rules—

(a) “Local authority” means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area.

(b) “Local fund” means any fund under the control or management of a local authority.

### CLASSIFICATION.

Rule 1. Hospitals and dispensaries under Government supervision shall be divided into the following classes—

Class I. *State hospitals and dispensaries*, including all institutions maintained by Provincial Funds and under Government management. (The fact that an institution is possessed of endowments, or receives contributions from local funds or private subscriptions, does not remove it from this category so long as Provincial Funds are practically responsible for all the charges connected with it.)

Class II. *Local Fund institutions*, including all institutions which are placed under the control and administration of local authorities, or guaranteed or maintained by local funds. (The fact that such an institution is aided by private subscriptions, or receives assistance from Government in the shape of part of the salary of the medical officer, grants of medicine, or otherwise, does not remove it from this category so long as its existence is practically dependent upon local funds.)

Class III. *Private institutions*. This class is sub-divided into—

(a) Institutions maintained entirely at the cost of private individuals or associations or from private endowments. (The fact that Government supplies superior inspection or registers does not remove an institution from this category.)

(b) Institutions supported by private subscriptions or endowments, but receiving aid from Government or local funds.

CONDITIONS UNDER WHICH GOVERNMENT AID AND SUPERVISION  
WILL BE GIVEN.

Rule 2. No hospital or dispensary shall be established in Class I, and no aid shall be granted from Provincial revenues to any hospital or dispensary in Class II or Class III, without the previous sanction of Government. No hospital or dispensary shall be established in or removed from Class II, or transferred to this class from Class III, without the previous sanction of the Commissioner. No private institution shall be brought into Class III, or receive supervision or aid from Government, except with the sanction of the Commissioner, and in accordance with these rules. No private institution not included in Class III shall receive aid from Government or local funds. Any institution in Class III may be withdrawn therefrom at any time at the option of the owners or supporters, but shall, on being so withdrawn, cease to receive supervision or aid from Government or local funds.

Rule 3. Applications for the sanction of the Commissioner under Rule 2 in respect of any hospital or dispensary shall be submitted through the Magistrate of the district concerned. On receipt of such an application, it shall rest with the Commissioner to accept, modify or reject the proposals which it contains, and to pass such other order as he shall think fit. The Lieutenant-Governor reserves the right to withdraw his sanction, supervision or aid in the event of a dispensary not continuing to serve adequately the purposes of a *bonâ fide* public charity, or if its continuance appears otherwise undesirable.

Rule 4. A guarantee bond, in the form prescribed in Appendix A, must be executed by the intending supporters of an institution in Class III.

Rule 5. The Managing Committee of every hospital or dispensary under these rules, whether in Class I, Class II, or Class III, shall submit to the Medical Department, through the Civil Surgeon of the district, such reports, returns, and accounts as may be prescribed from time to time. Such reports, returns, and accounts shall be in such forms, and be submitted on such dates, as may be prescribed. All books, registers, and forms which may be necessary for the preparation and submission of such reports, returns, and accounts will be supplied by Government free of cost.

Rule 6. Every institution which is recognised by Government and brought under these rules is subject to inspection and supervision by the Commissioner of the Division, by the Civil authorities of the district, by the Civil Surgeon, by the administrative officers of the Medical Department, and by any other



person who may be generally or specially appointed in that behalf. No charge will be made for such inspection or supervision.

Rule 7. Government aid to a hospital or dispensary will be conditional on the observance of due economy in the management of the dispensary funds. The Inspector-General of Civil Hospitals will bring to the notice of the Commissioner any instance in which he considers that such economy is not observed.

#### APPOINTMENT, PAY, LEAVE, AND PENSION OF MEDICAL OFFICERS.

Rule 8. The medical officers of every institution in Class I of these rules shall be taken from the Government establishment, and shall be appointed by the Inspector-General of Civil Hospitals.

Rule 9. The local authority or Managing Committee vested with the control and administration of an institution in Class II, and the Managing Committee of an institution in Class III, shall be entitled to appoint their own medical officer, subject to the following conditions, viz. :—

(a) that he be a duly qualified medical man, licensed or certified by a recognised medical college or school, his license or diploma being subject to examination and approval by the Inspector-General of Civil Hospitals ;

(b) that he be not a dismissed servant of Government, or disqualified for his duties by age, infirmity, or character ; and

(c) that in the event of misconduct, insolvency, or professional incompetence by reason of age or otherwise, being proved against him to the satisfaction of the Medical Department, he be removed from his charge on the requisition of the Inspector-General of Civil Hospitals :

Provided that on the application of the local authority or Managing Committee of any such institution, the services of a Government medical officer may be lent to such institution subject to the rules laid down in this Manual.

Provided, also, that no officer of the Government establishment, who, on the date when these rules come into force, is holding medical charge of any institution in Class II shall be removed from his appointment by the local authority except with the consent of the Inspector-General of Civil Hospitals.

Rule 10. In the case of a hospital or dispensary situated at the head-quarters of a sub-division, the services of the Government medical officer in charge of the sub-division will, if the local authority or Managing Committee of the institution so desire it, be made available for the charge of the hospital or dispensary in addition to his other duties, on condition that the proprietors or managers of the dispensary undertake to pay him an additional allowance of Rs. 10 a month if he is a Civil Hospital

Assistant, or Rs. 20 a month if he is an Assistant-Surgeon. It will be open to them, however, to obtain the services of a medical subordinate of the Government establishment of such higher rank as they may desire, on the payment by them of the full amount by which the authorised pay and allowances of such officer may exceed the amount sanctioned by Government for the medical charge of the sub-division.

Rule 11. The Inspector-General of Civil Hospitals may, at any time, for departmental or other reasons, remove or transfer any Government medical subordinate whose services have been lent to an institution in Class II or III, and may, with the consent of the local authority or Managing Committee of the institution, appoint another medical subordinate to succeed him. In every such case, except as hereinafter provided, the transit pay and travelling allowances both of the officer transferred and of his successor shall be entirely paid by Government :

Provided that if any officer is transferred at the request of the local authority or Managing Committee, the transit pay and travelling allowances both of the officer transferred and of his successor shall be entirely paid by the local authority or Managing Committee concerned.

Rule 12. The pay to which a Government medical subordinate in substantive charge of a hospital or dispensary is entitled, is the pay of his grade in the public service. In the event of his becoming entitled, on promotion, to a higher salary than he has received, the local authority or Managing Committee of a dispensary in Class II or Class III may at their option either (a) retain his services on payment of the higher salary, or (b) apply for the services of another officer of the Government establishment as provided in Rule 9, or (c) appoint their own medical officer, subject to the conditions prescribed in that rule.

Rule 13. No allowance in excess of the pay to which he is entitled under Rule 12 shall be granted to any officer of the Government establishment for the charge of a hospital or dispensary in Class II or Class III. An officer of the Government establishment in charge of a hospital or dispensary in Class IIIa shall receive such allowances as may be determined by the Managing Committee of the institution.

Rule 14. Government medical subordinates appointed to the charge of a hospital or dispensary under these rules will retain their right to pension, but the amount of pension of each officer will be determined by the salary to which he may be entitled by his grade in the Government service, without reference to any additional allowances paid to him by the managers of the hospital or dispensary under the second clause of the last preceding rule.

Rule 15. Government medical subordinates in charge of hospitals or dispensaries in Classes II and III are entitled to leave under the rules of the Civil Leave Code. All applications for leave shall be submitted through the local authority or Managing Committee and the Civil Surgeon of the district to the Inspector-General of Civil Hospitals, who alone is authorised to grant the leave. The travelling allowances and transit pay of a *locum tenens* under this rule shall be paid by Government.

The leave pay of an officer proceeding on privilege leave will be borne by the local authority or Managing Committee of the dispensary. In all other cases the leave pay of the officer will be paid by Government.

Rule 16. Medical officers in charge of hospitals or dispensaries in Class II or Class III, who are not in Government service, shall be entitled to such leave as the local authority or Managing Committee may grant, provided that in the case of an institution in Class II, if rules for the grant of leave have been framed by the local authority concerned, leave shall only be granted in accordance with such rules. The local authority or Managing Committee shall provide for any expenditure that may be incurred on account of the pay of the medical officer while on leave, and the pay and travelling allowances, if any, of his *locum tenens*.

Rule 17. The salaries or part salaries of Government medical subordinates which are due from hospitals or dispensaries must be paid for each month on or before the 15th day of the following month. If payment is not made as above, the Magistrate of the district is authorised to advance the amount due, and will be responsible for its prompt recovery.

#### MEDICAL STORES.

Rule 18. Hospitals and dispensaries which pay for their own medicines and instruments shall have the option of obtaining them either from the Government stores or from private vendors approved by the Civil Surgeon; provided that a dispensary previously supplied by private vendors cannot indent on the Government stores without the sanction of the Inspector-General of Civil Hospitals. In either case the indents of the medical officer must be checked by the Civil Surgeon.

Rule 19. Medical stores will be supplied to dispensaries from the Government Medical Store Department at cost-price ;\*

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\* Cost-price includes the percentage fixed from time to time by Government to cover expenditure on supervision and other charges of the Medical Store Department.

but the supply of medicines will ordinarily be confined to the articles specified in the list given in Appendix E., and it will be in the discretion of the Inspector-General of Civil Hospitals to sanction or disallow any demand.

Rule 20. Medical stores, if required from the Medical Store Department, must be indented for annually, and the annual indent must be submitted on the date fixed by the Civil Surgeon to enable him to submit the combined indent for his district on the date appointed by Government. Indents delayed beyond the date fixed will not be passed for supply from the Government stores.

Rule 21. Payments due to the Medical Store Department for medical stores must be made within a month of the receipt of the account at the hospital or dispensary.

#### MANAGEMENT AND SUPERVISION.

Rule 22. The management of hospitals and dispensaries under these rules shall be vested as follows :—

If the institution is in—

(a) Class I—in such officer, person or persons as Government may direct.

(b) Class II—in the local authority, or any Managing Committee appointed by it. Such Committee may include persons who are not members of the local authority, and shall exercise its powers subject to the directions of the local authority by whom it was appointed.

(c) Class III—in a Manager or Managing Committee to be appointed by the Commissioner; provided that no Committee shall be appointed for any institution in Class IIIA, unless the proprietors or chief supporters apply for such appointment.

Rule 23. When Managing Committees are appointed, in cases (b) and (c) of Rule 22, the names of the members shall be published by the Commissioner in the *Calcutta Gazette*. The Committee shall elect two of their number to be Chairman and Vice-Chairman respectively, and may also elect another of their number as Secretary.

Rule 24. The Managing Committee shall meet at least once a quarter, and shall scrutinise the accounts and enquire into all matters affecting the welfare of the institution. They shall examine and pass the monthly accounts, and shall keep a minute-book in which their proceedings shall be recorded.

Rule 25. The Managing Committee shall be responsible for the management of the funds of the institution. It shall be their duty to see that the guaranteed and promised subscriptions are regularly collected. After defraying the current expenses of

the institution, the balance, if any, of the donations and subscriptions realized by the Committee shall be deposited by them in the Post Office Savings Bank. When the amount at credit of the dispensary is Rs. 3,000, the Comptroller-General should ordinarily be asked to invest the whole or a part of it in Government securities. No other mode of investment will be allowed without the previous sanction of Government.

Rule 26. The Secretary shall keep the accounts of all funded and other property belonging to the institution. He shall receive from the medical officer in charge a monthly account of the receipts and disbursements, and shall examine and countersign all the establishment pay and contingent bills of the institution. He shall, at the end of each month, prepare a statement of the accounts, which he shall submit to the Committee at their next meeting.

Rule 27. In the case of institutions in Class II, all subscriptions, donations, and the interest on endowments shall be credited to the local fund, but a separate account of dispensary receipts and expenditure shall be kept. The endowments and other invested funds of such institutions shall be held in the custody of the Comptroller-General apart from the assets of the local fund. The securities shall not be sold, and these invested funds shall not be appropriated or used in any way without the sanction of Government.

Rule 28. The Civil Surgeon shall be the visiting Superintendent of every hospital and dispensary in his district which is classified under these rules.

Rule 29. The Superintendent shall scrutinise the expenditure and accounts of every hospital or dispensary in his district, and shall call the attention of the Managing Committee to any irregularity or other circumstance which in his opinion deserves notice.

The Managing Committee shall be bound to consider any communication from the Superintendent, to afford him full information as to the conduct of the medical officer in charge, and all other matters affecting the welfare of the sick and the management of the institution.

If any difference of opinion arises between the Superintendent and the Managing Committee regarding any non-professional matter affecting the management of the institution, a reference shall be made through the Magistrate to the Commissioner of the Division, and the decision of the Commissioner shall be final.

Rule 30. The Superintendent shall visit each dispensary in his district not less than twice annually, and shall prepare and

submit promptly to the Inspector-General of Civil Hospitals inspection reports in Form No. XVI given in Appendix B.

Rule 31. The Superintendent shall furnish an annual report of the working of the hospitals and dispensaries in his district to the Inspector-General of Civil Hospitals, according to the scheme given in Appendix C, and annual returns in accordance with the forms annexed.

Rule 32. The Managing Committee of every hospital or dispensary shall cause to be kept at the institution—

(a) A record of the work done, showing day by day the number of patients treated, the affections for which they were treated, and, in important cases, some account of the symptoms, the treatment, progress, and the result.

(b) A record of the accounts of the institution.

These shall be written up daily by the medical officer in charge, and shall be open at all times to the inspection of inspecting officers.

The medical officer shall write up all other books and records prescribed under these rules or otherwise, and in any case in which this is not done, the reason should be stated in the inspection report of the Superintendent.

Rule 33. An extract from the proceedings of each meeting of the Managing Committee shall be promptly forwarded to the Superintendent, who may, if he thinks fit, and shall, if the Managing Committee so desire, submit it with his remarks to the Inspector-General of Civil Hospitals.

Rule 34. A Visitors' book shall be kept in every hospital and dispensary, in which will be recorded the remarks of visitors. A copy of these remarks shall be forwarded, on the day of entry, to the Superintendent, who will, if necessary, transmit it with his remarks to the Inspector-General of Civil Hospitals within three days of its receipt in his office.

#### GENERAL

Rule 35. The medical officer in charge of a hospital or dispensary is responsible for the proper treatment of the sick, and this duty shall not on any account be delegated to a subordinate; he is also responsible for all matters connected with the comfort and well-being of the patients, and for the proper working of the dispensary establishment.

Rule 36. The Managing Committee shall prescribe the hours of attendance (which shall not be less than four hours in the morning and two hours in the afternoon) within which the medical officer must be present at the dispensary. He must also give attention to urgent cases at other hours.

The hours of attendance shall be clearly stated in a notice posted in some conspicuous part of the dispensary.

Rule 37. Any person attending at a charitable dispensary is entitled to receive advice free of charge, but the medical officer may exercise his discretion in refusing to supply medicines in ordinary cases where the person is not poor. Medicines should never be refused to any urgent or dangerous case attending the dispensary. The medical officer refusing to give medicines gratis shall promptly report the facts to the Superintendent and the Managing Committee.

Rule 38. No medicines may be issued from the dispensary stock to any one who does not receive treatment at the dispensary either as an in-door or out-door patient.

Rule 39. In no case shall any money payment be received from any person attending the dispensary. Provided that where special accommodation has been provided for paying patients, fees shall be levied according to a scale previously sanctioned in that behalf by the Managing Committee.

Rule 40. The medical officer in charge of a dispensary has the privilege of engaging in private practice, provided it does not interfere with his attendance at the dispensary during the hours prescribed under Rule 36, or in any other way with his dispensary work. The Managing Committee may, with the sanction of the Superintendent, make rules for the attendance, gratuitously or otherwise, of the medical officer, on persons in their own homes who are unable by reason of sickness to attend the dispensary.

Provided that a medical officer who is on the Government establishment is bound to attend gratuitously all persons who, under the orders of Government, are entitled to such gratuitous attendance at their own homes.

Rule 41. No medical officer in charge of a hospital or dispensary shall have any interest in a private dispensary or druggist's shop.

Rule 42. When accommodation is provided for the medical officer in or near the dispensary, he must live in the residence provided for him.

Rule 43. In dispensaries in which there are house patients, a bed-head ticket in the prescribed form shall be hung over the bed of each in-patient.

Rule 44. Medicines and instruments shall be kept under lock and key, except small quantities of the articles in daily use during the attendance of patients.

Rule 45. Poisons must be kept under separate lock and key.

Rule 46. No building for the location of a dispensary or hospital in Class II, and no extension to such building, shall be





(2.) Bed-head ticket (Form II). This should be written up daily and be filed, so as to preserve a concise history of the case and treatment. It is advisable also to keep a case-book for recording all special or important cases.

(3.) Register of out-patients (Form III).

(4.) Ticket for out-door patients (Form IV).

(5.) Monthly return of in and out-patients (Form V). This should be prepared and submitted to the Civil Surgeon soon after the close of the month, and a copy should be kept in a book for the more easy and accurate preparation of the annual return.

(6.) A season register of vaccination for use in dispensaries to which vaccinators are attached. The form can be obtained from the Superintendent.

(7.) Annual return and report of vaccination. In duplicate; one copy to be filed, and the other to be submitted to the Superintendent, who will draw up a "general" return and report (in similar form) of the operations performed in all the dispensaries under his superintendence, and submit them, through the prescribed channel, to the office of the Sanitary Commissioner, the individual dispensary returns being filed in his own office.

(8.) Monthly bills in detail of establishment, diet, and contingencies (Form VI) to be prepared by the medical officer in charge, and examined and countersigned by the Secretary for payment. These bills are then to be sent to the committee or district officer, as the case may be, for payment. In all cases in which there is a grant from Government for establishment, diet or any other charge, the bills of such expenditure are to be kept separate from the private accounts of the charity.

(9.) A bill-book for copies of all the dispensary bills.

(10.) A monthly statement of accounts (Form VII, Parts I and II) to be submitted in duplicate monthly to the Superintendent, who will send one copy to the Magistrate, and keep one for record. A copy of this is to be kept in the bill-book (9), and laid before the committee at their monthly meetings. This rule applies only to dispensaries in Classes II and III.

(11.) A daily account or cash-book, showing actual receipts and expenditure in detail. This is to be kept at the dispensary, and the account totalled up at the end of each month.

(12.) A diet-book (in Form VII). This is required only in dispensaries in which there are in-patients.

(13.) Monthly return of medical subordinates and hospital servants, including acquittance roll (Form IX,) to be sent monthly to the Superintendent.

(14.) A subscription and donation book. This should be in Form X, and should be kept up by the Secretary.

(15.) A nominal disposition roll of subordinate medical officers, Assistant Surgeons, and Civil Hospital Assistants (Form XI), to be submitted to the Inspector-General of Civil Hospitals quarterly. This is to be prepared by the Civil Surgeon, and to include all medical subordinates serving under him. The report regarding the qualifications of the medical officers is to be treated as confidential, and is not to be filed in the Civil Surgeon's office.

(16.) Annual indent for European medicines and instruments (Form XII), to be prepared on the printed form and submitted in duplicate.

(17.) Annual indent for forms to be prepared on the printed form (Form XIII), and to be submitted in quadruplicate.

(18.) Annual return (Form XIV). The annual return is to be sent through Superintendents direct to the Inspector-General of Civil Hospitals. The *summary* report of the Civil Surgeon should be prepared in accordance with the scheme laid down in Appendix C, and be submitted through the *Civil authorities*. The medical officer of a dispensary is expected to draw up his report in English, but when he is unable to do so, he should prepare it in the vernacular, and it must be translated in the office of the Superintendent.

(19.) Operations are to be entered in accordance with the list in Form XV.

(20.) For a visitors' book, a simple blank book will suffice.

(21.) Inspection reports of Civil Surgeons should be submitted according to Form No. XVI.

(22.) A book for copies of certificates given in police and medico-legal cases (Form XVII).

(23.) A blank book for records of *post-mortem* examinations, medico-legal or otherwise, and for keeping detailed records of wounds or other police cases. Instead of a book being kept up, a copy of Form No. XVIII, which is to be used when despatching viscera to the Chemical Examiner, may be filed as a record of medico-legal *post-mortem* examinations.

(24.) Blank book for copies of all letters and circulars received and forwarded.

(25.) A property book should be kept up at all dispensaries.

(26.) A book-cover for filing all circulars and other letters.

(27.) A book for copying all letters despatched.

(28.) A committee-book for recording the proceedings of each meeting of the dispensary committee.

(29.) A stock ledger of medicines (Form XIX).

## NOTIFICATION.

*The 16th September 1886.*—It is hereby notified for general information that the Lieutenant-Governor has been pleased to make the following rules under clauses (i) and (r), section 138 of the Bengal Local Self-Government Act III (B. C.) of 1885 :—

## PART VIII.

## ACCOUNT AND AUDIT.

*Preliminary.*

1. In the following rules, unless there be something repugnant in the context,—

(a) The term “District Board” includes a duly empowered Joint Committee constituted under section 30, and a Local Board duly empowered under section 101 ; and

(b) The term “Chairman” includes a Vice-Chairman in respect of the powers assigned to him by rules framed by the District Board under section 32, clause (e).

Provided that when a Secretary has been appointed by the District Board, the Chairman may delegate to the Secretary any of his duties and powers under these rules, subject to any general or special directions that may be laid down by the District Board in that behalf

2. In all matters not expressly provided for by these rules, the rules, forms, registers, and returns, prescribed in the Civil Account Code, or in force for the time being, under the orders of Government or other competent authority shall, in so far as they are consistent with these rules, and with the Act, apply to the accounts of the District Board, and shall be observed, used, kept, and submitted by the officer appointed under section 54 of the Act.

3. The rules, forms, registers, and returns prescribed by Government for regulating the accounts of District Road Committees under the Cess Act IX (B. C.) of 1880, shall, in so far as they are consistent with these rules and with the Act, apply to the accounts of the District Board in respect of the matters dealt with in Part III, Chapter I, D (Public Works) of the Act.

*General.*

4. All the accounts and registers of the District Board shall be kept in English. All books of accounts and registers shall be substantially bound and paged before being brought into use, and no accounts shall be prepared on loose sheets of paper or in loosely bound volumes.

5. All corrections and alterations in accounts shall be neatly made in red ink, and attested by the initials of the Chairman. All corrections and alterations in a voucher shall be attested by

the payee. Erasures shall on no account be permitted in registers, statements, vouchers or accounts of any description.

6. No expenditure shall be incurred for which provision has not been made in the budget estimate of the year, or in a supplementary budget estimate; or which has not been duly sanctioned by the District Board, or by the Chairman or other executive officer of the Board acting in the exercise of the powers conferred on him by the Act or the rules made under the Act.

7. The Chairman shall cause to be kept a register of establishment in Form No. I, showing in respect of all establishments whatsoever employed by the District Board the particulars specified in the form. A separate page or section shall be allotted to each class of establishment. All changes made by competent authority from time to time in the numbers, nomenclature, or salaries of the establishment shall be immediately entered in the register, with the number and date of the orders authorizing the change.

8. Every employé of the District Board shall be required to keep a service-book in the form prescribed for uncovenanted servants of Government; and all entries made therein shall be renewed or attested by the Chairman at least once every five years.

9. The Chairman shall promptly report to the Accountant-General, Bengal, and the Commissioner of the Division, the occurrence of any embezzlement or irregularity in the accounts of the District Board which may come to his notice, and shall observe the rules and procedure prescribed for reporting embezzlements and irregularities occurring in Government offices.

#### *Budget Estimates.*

10. The Collector of the district shall, on or before the 1st October in each year, prepare and transmit to the District Board an estimate of the balance of the District Road Fund to be transferred to the credit of the District Fund during the financial year next ensuing under section 52, clause (1) of the Act.

11. A budget estimate in Form No. II, showing the probable receipts and expenditure of the District Fund under all heads during the ensuing financial year, shall be prepared by the Finance Committee constituted under section 55 of the Act, and shall be laid before the District Board at a meeting to be held not later than the 15th November in each year.

12. The budget estimate shall set forth estimated receipts and expenditure under major and minor heads of account only; and shall be accompanied by a schedule in Form No. III for each major head, in which shall be entered full details of the estimated receipts and expenditure under that head, working up to the totals shown under that head in the budget estimate.

13. The budget estimate and schedules shall show (1) the actual receipts and expenditure for the latest year for which the accounts have been closed, (2) the sanctioned estimate, the revised estimate, and six months' actuals for the year then current; and (3) the probable receipts and expenditure for the ensuing financial year.

14. In entering the details of receipts and expenditure in the schedule for each major head, the same forms and the same degree of particularity shall be observed as are prescribed for district budget estimates under the orders of Government, the Accountant-General, Bengal, or other competent authority. In preparing the schedule for Public Works under the control and administration of the District Board, the rules and forms prescribed for the budget estimates of District Road Committees under the Cess Act IX (B. C.) of 1880 shall be observed.

15. The budget estimate and schedules shall be accompanied by explanatory notes explaining any new and important item of receipt or expenditure, and, when any new charge requires the sanction of superior authority, by a copy of the order of sanction.

16. The District Board shall never, except with the previous sanction of the Lieutenant-Governor, exhaust or exceed its balance in the treasury; and the budget estimates shall be framed so as to provide for an adequate working balance throughout the year, and for an adequate closing balance. The Commissioner shall decide what constitutes an adequate working and closing balance, and his decision shall be final.

17. No change shall be made in the major or minor account headings prescribed by Government, and the same account headings shall be used in all accounts and returns prepared or submitted by the District Board.

The minor heads of account may be subdivided in the Cash Abstract Registers as may be found convenient, but all statements and returns shall be compiled by totals of minor heads.

18. In preparing the budget estimate, attention shall be given to the following points:—

(a.) What is expected to be paid (under proper sanction) during the year shall be provided for, not the liability falling due within the year.

(b.) For fixed charges the detailed estimates shall show the full amount of the sanctioned scale: when it is found by experience that a saving will arise from any cause, a lump deduction may be made.

(c.) The number of employes shall be carefully stated in the detailed estimates, and checked; the rate of pay shall be stated, wherever possible, in order to admit of verification of the column of charge.

19. The District Board may, at any time, with the previous sanction of the Commissioner, transfer grants from one major head of account to another, and from one minor head to another minor head subordinate to the same major head: Provided that the total budget grant is not thereby exceeded.

As amended by Notification of the 26th August 1887.

20. If at any time during the year the District Board has reason to believe that the budget grant under any head is likely to be exceeded, and that the excess cannot be met by a reduction under some other head, a supplementary budget estimate shall be prepared with the least possible delay, and submitted through the Magistrate for the orders of the Commissioner in the manner prescribed in sections 47 to 49 of the Act.

If the Board has reason to suppose that the receipts under any head are likely to fall materially short of the budget estimate, a revised budget estimate shall be prepared with the least possible delay, and submitted as above for the orders of the Commissioner.

*Transactions with the Treasury.*

21. The District Fund shall be lodged with the Collector of the District, who shall keep a separate account thereof

22. The District Board shall not appropriate towards expenditure any moneys received by its servants, but shall immediately send them intact to be credited in the Treasury.

23. All money paid into the Treasury to credit of the District Fund, whether by servants of the District Board or others, shall be accompanied by a challan. This challan shall be in triplicate, having the words "Original," "Duplicate," and "Triplicate," printed or written in red on the first, second, and third parts respectively. The first part shall be retained by the Treasury Office, the second part shall be sent to the Office of the District Board whenever the pass-book is returned, and the third part shall be delivered to the person paying in the money.

All moneys received by the servants of the District Board shall be remitted by them direct to the Treasury at once, and shall not be paid in through the medium of the District Board's Office.

As amended by Notification of the 13th March 1888.

24. All moneys remitted to the Treasury to credit of the District Board, and all payments made by the Treasury on cheques or otherwise on account of the District Board, shall be entered in a pass-book; the pass-book shall remain in the custody of the

Chairman, and it shall be sent to the Treasury with every remittance, and also on the last working day of every month. On receipt of the pass-book by the Treasury officials, the entry of the remittance made (if any) shall be initialled by the Treasury Officer, and then the charge side shall be written up to date, and the book returned at once to the office of the District Board.

The pass-book will be supplied by the Treasury. It is not a District Fund Account-book, but is simply a copy of the account kept in the Treasury of the money paid into the credit of, and disbursed on account of, the District Board, and must, therefore, always be written up *only by the Government Treasury Department*, by whom the original account is kept.

As amended by Notification of the 13th March 1888.

25 No entries or marks shall, under any circumstances, be made in the pass-book by any one connected with the District Board's Office.

26. At the close of each month, the balance in the pass-book shall be struck, the amount written in words, and signed by the Treasury Officer.

27 The Chairman shall examine the pass-book from time to time, and shall immediately call the attention of the Treasury Officer to any discrepancy that may appear between the credits and debits shown in the pass-book, and those shown in the accounts of the District Board's Office.

28. When a grant is made to the District Fund from Provincial revenues, either as a general grant-in-aid, or for expenditure on any specific object, the Chairman shall apply to the Treasury Officer to credit the amount of the grant to the District Fund, forwarding a copy of the orders of Government sanctioning the same; and the Treasury Officer shall, on receipt of instructions from the Accountant-General, place the amount of the grant to credit of the District Fund. The credit shall be made by book transfer; no bill or cheque shall be drawn, and no money shall be paid out of the Treasury.

29. The balance of the District Road Fund on the last day of each month shall be transferred to the credit of the District Fund on the first day of the following month, and duly entered in the pass-book. The Collector shall send to the Chairman a separate intimation of the amount so transferred.

30. The Treasury Officer shall supply the Chairman, imme-

diately after the close of each month, with a balance certificate in the following form :—

*Abstract of District Fund Account for the month of \_\_\_\_\_ in the Treasury*  
of \_\_\_\_\_

	Rs. A. P.		Rs. A. P.
1. Balance brought forward from last month ...		4. Debited in cash account of this month ..	
2. Credited in cash account of this month ...		5. Other debits, as per Accountant - General's No. , dated ,	
3. Other credits, as per Accountant - General's No. , dated ,		6. Balance at end of month,	
<b>GRAND TOTAL ...</b>		<b>GRAND TOTAL ...</b>	

#### *Payment of Claims.*

31. For the payment of petty charges, the Chairman shall hold a permanent advance of such amount as the District Board may fix from time to time : Provided that without the sanction of the Commissioner the District Board shall not fix, the amount of the permanent advance at more than Rs. 100.

32. The permanent advance shall be recouped as often as may be necessary, and in the manner prescribed for the recoupment of the permanent advance of the District Magistrate and Collector: Provided that the cash for the recoupment of the permanent advance shall be drawn from the Treasury by cheque.

33. Payments of not more than Rs 20 shall be made from the permanent advance : Provided that no charge on account of the salary of any employé of the District Board shall be made otherwise than as prescribed in Rules 34 and 38.

34. All payments exceeding Rs. 20, shall be made by cheques, unless there are special circumstances rendering payments in cash desirable, provided that all payments of sums above Rs. 10 on account of salaries of employés of the District Board shall be made by cheque.

*As amended by Notification of the 7th February 1888.*

35. Cheque-books will be supplied by the Treasury Officer only, and no other form shall be used. Cheque-books and the counterfoils of used cheques shall be kept in the custody of the Chairman.

36. Cheques for sums not exceeding Rs. 100 shall be signed by the Vice-Chairman. Cheques for sums exceeding Rs. 100 shall be signed both by the Chairman and Vice-Chairman. If



the Vice-Chairman is absent, or is from any cause incapacitated from signing, the cheque shall be signed by some member of the Finance Committee on behalf of the Vice-Chairman.

By Notification No 716 of the 10th February 1887 it is ordered that in all cases in the absence of the Chairman or Vice-Chairman, one of the members of the Finance Committee shall sign in his place

37. No cheque shall be signed unless required for immediate delivery to the person to whom the money is to be paid.

38. Every cheque shall be drawn in English in favour of the person to whom the money is actually due. Payment shall not be made to any other person except on production of a written authority from the creditor to receive it on his behalf. This rule does not apply to cheques issued for a sum of money distributable as pay or wages among a number of District Fund employes or for recouping the permanent advance, or for payment to a postmaster for a money-order or money-orders issued for payment of stipends or rewards to gurus.

As amended by Notification of the 7th February 1888.

39. The amount of every cheque shall be written in words as well as in figures, both on the cheque itself and on the counterfoil, and the counterfoil shall be initialled by the person or persons who sign the cheque. The word "only" shall always be inserted after the amount written in words in the body of the cheque.

40. Every cheque drawn for a sum in excess of Rs. 20 shall bear a receipt stamp of the value of one anna, and such receipt stamp shall be affixed before the cheque is signed.

41. When a signed cheque is cancelled, it shall be stamped "cancelled" by the Chairman. The cancelled cheque shall be destroyed as soon as the accounts for the month in which the cheque was drawn have been audited. The amount of the cancelled cheque shall be entered as a receipt on the debtor side of the cash-book (Form No. V), and shall be treated as a refund. (See Rules 57 and 58.)

42. Every bill or other claim for payment from the District Fund shall be presented in the first instance to the Accountant, who shall check and examine it, and if it be found correct and in order, shall submit it for orders to the Chairman. If payment of the bill so presented is to be made, an order for the payment shall be endorsed upon it. The order for payment shall run as follows:—"Pay Rupees                      only (Rs.                      )," the amount being written in words as well as in figures, and shall be signed by the Chairman.

43. If payment is to be made from the permanent advance, the Chairman shall first cause the bill to be stamped with the

words "Paid in cash," and shall then sign an order for payment across the bill, and pay the money from the permanent advance.

44. If payment is to be made by cheque, the Chairman shall cause the bill to be endorsed with the words "Paid by cheque No. " ; and shall then sign the endorsement, and cause the cheque to be drawn out, signed, and issued.

45. When any payment is made either by cheque, or in cash from the permanent advance, it shall be immediately entered in the accounts of the District Board. In the former case, it shall be entered in the cash-book (Form No. V). In the latter case, it shall be entered in the permanent advance account (Form No. VI).

46. Every payment made, either in cash or by cheque, shall be covered by a receipt, stamped, if necessary, signed by the person to whom the money is due, and to whom it has actually been paid. A receipt signed by another person for the creditor, or with a stamp, is invalid.

47. All bills and vouchers that have been paid by cheque shall be numbered consecutively for the year in order of payment, and shall be pasted in a guard-book.

Bills and vouchers that have been paid in cash out of the permanent advance shall be numbered consecutively, and abstracted in a register (Form No. VII) as they are paid. The originals shall be submitted to the Chairman when the permanent advance is being recouped, and the Chairman shall cause them to be destroyed in his presence before issuing the cheque for recoupment of the permanent advance.

#### *Cash-book.*

48. The District Fund Cash-book shall be kept in Form No. V. The receipt entries in this book shall be made direct from the pass-book in the case of amounts credited direct to the fund by the Collector of the District. In the case of other receipts, the cash-book shall be posted as soon as any money is received in the District Board's Office, by means of money-order, irrespective of whether the money is immediately remitted to the Treasury or not.

Expenditure shall be entered day by day, as cheques are issued. (See also Rule 45.)

As amended by Notification of the 13th March 1888.

49. The cash-book shall be closed and balanced once a month, and shall be signed by the Chairman. In the event of any cheques issued during a month remaining uncashed by the Treasury at the close of the month, there will necessarily be a difference between the balance brought out in the cash-book and that

of the Treasury Pass-book, and of the certificate issued by the Treasury Officer under Rule 30. This difference shall be explained by a note in the last page of the cash-book for the month in the following manner —

	Rs.	A.	P.	Rs.	A.	P.
Balance as per cash-book	...	..		5,047	15	6
Add cheques uncashed—						
No. 4, dated 10th April 1886	...	50	0 0			
„ 23, „ 21st „ „	...	40	0 0			
				90	0	0
Balance as per pass-book	...	...		5,137	15	6

### *Permanent advance.*

50. When the permanent advance is drawn for the first time, or is subsequently recouped, the amount so drawn or recouped shall be charged off at once in the cash-book as soon as the cheque is issued. The amounts so drawn shall be debited to the head “Advances,” and posted in the advance ledger (Form No VIII), and shall remain at the personal debit of the Chairman till they are repaid or accounted for.

51. When it becomes necessary to recoup the permanent advance, the Chairman shall compare the bills and vouchers paid since the last recoupment with the entries in the Abstract Register (Form No. VII), and shall initial the latter. He shall add the total of the latter to the cash in hand, and shall compare the aggregate with the sanctioned amount of the permanent advance; and shall cause the original bills and vouchers to be so defaced in his presence, that they cannot be used again, and shall then issue a cheque for the amount to be recouped. The original bills and vouchers will be kept until the accounts have been audited by the Examiner of Local Accounts.

As amended by Notification of the 7th February 1888.

### *Cash Abstract Register of Receipts and Expenditure.*

52. All the entries on the receipt side of the cash-book (Form No. V) shall be posted direct from the cash-book into the cash abstract register of receipts (Form No. IX), and all the entries on the payment side of the cash-book shall be posted into the cash abstract register of expenditure (Form No. X).

The cash abstract registers shall be posted as frequently as may be convenient, but in no case later than ten days after the close of the month to which the accounts relate.

53. Each item of receipt or payment appearing in the cash-book shall be posted separately into the cash abstract registers. Thus, if there be two or three payments on the same day on

account of the same head of expenditure, there will similarly be two or three entries under the same head in the cash abstract register, *i.e.*, the *separate items* appearing in the cash-book, and not the *totals* of the daily receipts or expenditure for each head, shall be posted into the cash abstract registers

54. The columns of the cash abstract registers shall be totalled every month, and the totals of the different heads of receipt and expenditure must necessarily be equal to the totals of receipts and payments in the cash-book.

#### *Adjustments.*

55. At the foot of each month's account in the cash abstract registers of receipts and expenditure (Forms Nos IX and X), two lines are left blank for the purpose of entering therein, and bringing upon the books of the District Fund, the adjustments made during the month.

56. Adjustments are transactions which have to be recorded in the monthly and annual accounts of the District Fund, but which are not actual cash transactions, and which therefore do not in all cases appear in the District Fund Cash-book.

57. Adjustments are of four kinds :—

(1.) The transfer from one head to another of items of receipt or expenditure wrongly classified in the first instance in the cash abstract registers.

(2.) The transfer of a sum of money from the head "Advances" to a head of expenditure.

(3.) Refunds of revenue received or of expenditure incurred during the current year of account.

(4.) The debit to a head of expenditure by credit to "Deposits received" of a sum of money due on a contractor's bill, but not paid, being retained as a security deposit for the due execution of future works.

58. In case (1) the adjustment shall be made by entering the amount in the line for "Adjustments by addition" in the column for the head to which the amount is to be added, and again in red ink in the line for "Adjustments by deduction" in the column for the head from which the amount is to be deducted. Both entries will be made in the cash abstract register of receipts if the amount is to be transferred from one head of revenue to another, and both will be made in the cash abstract register of expenditure if the amount is to be transferred from one head of expenditure to another.

In case (2) the adjustment shall be made by entering the amount in the line for "Adjustments by addition" in the column of the cash abstract register of expenditure for the head to which

charges on account of the particular expenditure incurred are to be taken, and in the cash abstract register of receipts in the line for "Adjustments by addition" under the head "Advances recovered." A corresponding entry must, of course, be made on the receipt or credit side of the advance ledger (Form No. VIII) of the person by whom the expenditure was incurred, and to whom the amount adjusted was originally advanced.

In case (3) the adjustment shall be made by entering the amount in the line "Adjustments by deduction" in the column of the cash abstract register of receipts or expenditure for the head to which the amount refunded was originally credited or debited, and in the cash abstract register of expenditure or receipts in the line for "Adjustments by deduction" in the column for "Refunds."

This procedure, however, shall not be followed when the refund made during the month is on account of revenue received during a previous year of account. In this case the amount refunded will remain at the debit of the head "Refunds," and no adjustment shall be made.

In every case of refund of revenue, a note of the refund shall be made against the original entry of receipt in the cash-book or other register, so as to guard against a second refund of the same amount being accidentally made.

In case (4) the adjustment shall be made by entering the amount in the cash abstract register of expenditure in the line for "Adjustments by addition" in the column for the head to which the balance of the charges of the bill from which the deduction has been made has been taken, and in the cash abstract register of receipts in the line for "Adjustments by addition" under "Deposits received."

59. Adjustments made by deduction in the cash abstract registers shall always be exhibited in red ink.

#### *Monthly, Quarterly, and Annual Accounts.*

60. Registers of monthly receipts and expenditure shall be kept in Forms Nos. XI and XII.

These registers shall be posted month by month from the cash abstract registers of receipts and expenditure respectively.

61. At the close of every month a monthly abstract of receipts and charges extracted by totals of minor heads from the registers of monthly receipts and expenditure (Forms Nos. XI and XII) shall be prepared by the District Board in Form No. XVIII. The memorandum on the first page A of the form showing the balance of the fund will simply be a repetition of the memorandum as explained in Rule 49 in connection with the cash-book

reconciling the balance of the cash-book with the balance of the pass-book.

The account shall be despatched to the Accountant-General, Bengal, not later than the 25th day of the month following that for which the accounts are due.

62 The quarterly and annual accounts prescribed by section 54 of the Act shall be compiled from the registers of monthly receipts and expenditure, and shall be in Forms Nos. XIII and XIV.

63. The quarterly account shall be published by lodging a copy, signed by the members of the Finance Committee and countersigned by both Chairman and Vice-Chairman, in the office of the Magistrate and Collector of the District. The annual account shall be published by lodging a copy, signed and countersigned as above, in the office of the Magistrate and Collector of the District, and by publishing it in the *Calcutta Gazette*.

64. The quarterly and annual accounts shall be published as provided in the last preceding rule not more than one month after the close of the period to which they respectively relate.

#### *Advances and Deposits.*

65. All moneys advanced to officers or employés of the District Board, or to contractors or other persons (whether on account of the permanent advance or otherwise), shall, in the first instance, be charged to the head "Advances" in the cash abstract register of expenditure, and entered in the advance ledger (Form No VIII). A separate account shall be opened in this ledger for each person to whom an advance has been given, and this account shall be credited with the amount of repayments made, and of adjustments made in the manner prescribed in the second clause of Rule 58.

66. All sums of money received by way of security deposit from contractors or others, and all sums received which are not the property of the District Fund, and have been placed with the District Board for a temporary purpose only, shall be credited to the head "Deposits received" in the cash abstract register of receipts (Form No. IX), and shall be entered on the credit or receipt side of the deposit ledger (Form No XV). A separate account shall be opened in this ledger for each person by whom a deposit is made; and this account shall be debited with the amount of repayments made, and of adjustments made in the manner prescribed in the last clause of Rule 57.

67. Each separate account in the ledgers of advances and deposits shall be balanced by the Chairman not less often than once a quarter.

68. At the close of every month abstract accounts shall be

prepared of all advances and deposits given or received, and adjusted, during the month and the balances remaining unadjusted.

The abstract of advances shall be prepared in Form No. XVI, and the abstract of deposits in Form No. XVII.

*Audit.*

69 The Finance Committee appointed under section 55 of the Act shall audit the accounts of the District Fund before they are submitted to the Accountant-General, and shall certify the result and the correctness of the account as audited by them. The certificate shall be given in Form No. XIX.

70. The accounts of the District Fund shall be examined and audited by the Examiner of Local Accounts in Bengal not less often than once in twelve months

In auditing the accounts, the Examiner shall see that they have been kept and are presented in proper form, that the particular items of receipt and expenditure are stated in sufficient detail, and that the payments are supported by adequate vouchers and authority. He shall ascertain whether all sums received, or which ought to have been received, are brought into account, and shall examine whether the expenditure is in all cases such as might lawfully be made. He shall also reduce such payments and charges as are exorbitant, and shall surcharge moneys not duly accounted for, or lost by negligence, upon the person who ought to account for the same, or whose negligence or improper conduct has caused the loss, and shall disallow and strike out such payments as are not authorized by law or competent authority.

The reports of such examinations shall be forwarded by the Accountant-General, Bengal, through the Commissioner of the Division to the Chairman of the District Board, and the Chairman shall be bound to remedy any defects or irregularities that may be pointed out by the Accountant-General or the Examiner.

*Local Boards.*

71. The statement of requirements and estimate of probable expenditure to be submitted by the Local Board to the District Board under section 51 of the Act shall be in Form No. II, and shall be accompanied by detailed schedules in Form No. III for each major head of account in respect of which the Local Board has been empowered under section 101 of the Act.

72. The District Board shall forward to each Local Board subordinate to it an extract of so much of the budget estimate of the District Fund, as sanctioned, as relates to the matters under the control and administration of the said Local Board.

73 The District Board shall, from time to time, make allotments of funds to each Local Board subordinate to it for expenditure on the matters under their control and administration.

74 In making any such allotment, the District Board shall simultaneously send an intimation to the sudder Treasury Officer, and to the officer in charge of the treasury or sub-treasury at or near the head-quarters of the Local Board concerned.

75 On receipt of such intimation, the officer in charge of the treasury or sub-treasury shall place the amount of the allotment to the credit of the Local Board, and shall enter it on the receipt side of the pass-book of the Local Board. The Local Board shall obtain funds by drawing cheques against the amount of the allotments thus placed at its credit from time to time.

76 Moneys paid into a sub-treasury on account of the District Fund shall not be credited in the pass-book of the Local Board, but shall, when incorporated in the sudder treasury account, be credited in the pass-book of the District Board. The Local Board shall send an account of such payments to the District Board not less often than once a month.

77 The Local Board shall keep a cash-book in Form No V. On the receipt side shall be posted the allotments made by the District Board from time to time; and on the expenditure side shall be posted details of the cheques drawn by the Local Board against the amount of those allotments.

The cash-book shall be closed and balanced on the last day of each month, and signed by the Chairman of the Local Board; and an authenticated copy thereof, supported by vouchers in original, shall be sent within seven days to the Chairman of the District Board.

78. The transactions of the Local Board, as exhibited in the authenticated copy of their cash-book, shall be scrutinized and passed by the Chairman of the District Board, and, if found correct, shall be at once incorporated in the cash-book and other accounts of the District Board.

R. H. WILSON,

*Offg. Secy. to the Govt. of Bengal.*

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NOTE.—The forms referred to in these rules are not given here, partly because they would take up too much space, and partly because they would obviously be of very little practical use. They can always be obtained printed and ready for use.



NOTIFICATION.

*The 14th March 1887.*—It is hereby notified for general information, that the Lieutenant-Governor has been pleased to make the following rules, under clauses (g), (i), and (m), section 138 of the Bengal Local Self-Government Act III (B. C.) of 1885 :—

PART IX.

QUALIFICATIONS OF CANDIDATES FOR EMPLOYMENT AS DISTRICT ENGINEERS, OVERSEERS, AND ACCOUNTANTS

1. Any person serving as a District Engineer under the Cess Act of 1880 at the time of the Local Self-Government Act coming into force, shall be deemed to be qualified for appointment as District Engineer of the same district

2. A candidate for employment as District Engineer must be qualified in one of the manners following, that is to say, he must,—

(a) Be at the time of seeking the employment, or have previously been, a member of the Public Works Department of the Government of Bengal and hold a certificate from the Chief Engineer that his services have been such as to qualify him for employment as District Engineer, or

(b) Hold the degree of Bachelor of Engineering or be a Licentiate of Engineering of the Calcutta University, and have been employed on engineering works for not less than five years, exclusive of any time spent on apprenticeship, and hold satisfactory certificates of good conduct and efficiency during such employment, or

(c) Have practised the profession of a Civil Engineer in India for not less than five years and hold a certificate from the Chief Engineer of the Public Works Department of the Government of Bengal that his experience, professional attainments, and knowledge of the native language are such as to qualify him for employment as a District Engineer.

3. A District Engineer of one district shall be deemed to be qualified for appointment to another district if certified to be so by the Chairman of the District Board and the Commissioner of the Division under whom he is employed.

4. Any person serving as an Overseer, Accountant, or otherwise on the Subordinate Engineering Staff of a District Engineer under the Cess Act of 1880 at the time of the Local Self-Government Act coming into force, shall be deemed to be qualified for appointment in the same capacity under the Local Self-Government Act if he is certified to be so by the District Engineer.

## 144 *Qualifications of Candidates for Employment.*

5. A candidate for employment on the Subordinate Engineering Staff of the District Engineer must be qualified in one of the manners following, that is to say,—

(1) If the pay of the appointment is Rs. 60 per mensem, or more, he must hold,—

(a) A certificate from the Principal of the Government Engineering College at Seebpore that he has served his apprenticeship there and passed the final examination qualifying him for employment in the Public Works Department as a foreman mechanic or an upper subordinate; or

(b) A certificate from the Inspector of Local Works that he has been examined and found to possess the knowledge prescribed in the Public Works Department Code, Volume I, Chapter II, Section 27 (*fifth edition*), and is qualified to be an upper subordinate of the Public Works Department;

(2) If the pay of the appointment is less than Rs. 60 per mensem, he must hold a certificate of fitness from the District Engineer.

6. Candidates for employment as Accountants in the Office of the District Board or of the District Engineer must hold a certificate that they have passed the examination prescribed in the Public Works Department Code, Volume I, Appendix C, paragraph 18 (*fifth edition*).

7. All candidates for employment as District Engineer or as subordinates on the staff of a District Engineer must be certified by a Civil Surgeon or Assistant Surgeon of the Government establishment to be physically fit for their out-door duties.

### *Procedure to be adopted in the appointment of District Engineers.*

8. When a District Engineer intends to resign his appointment, he shall give the District Board three months' notice of his intention, and similarly when it is intended in accordance with the provisions of section 33 (g) of the Act to discharge a District Engineer, the District Board shall give him three months' notice of such intention.

9. When notice is thus given or received that the appointment of District Engineer is about to become vacant, a meeting of the District Board shall be held for the purpose of fixing the salary of the new incumbent of the office, and a copy of the Resolution of the Board shall be submitted to the Commissioner for confirmation.

10. On receipt of the confirmation of the Commissioner, the Chairman of the District Board shall forthwith publish an advertisement in the *Calcutta Gazette* and in such other newspapers as

the District Board shall decide, inviting candidates to submit applications for the vacant appointment. This advertisement should be published for at least six weeks and should notify the salary attached to the appointment, the rules prescribing the qualifications required of candidates, and the date on which the applications are to be submitted.

11. All applications from intending candidates shall be submitted in sealed and registered covers addressed to the Chairman of the District Board, and superscribed "Application for appointment of District Engineer." Each application must be accompanied by all the necessary certificates and testimonials required by the preceding rules, together with a suitable envelope addressed and sufficiently stamped for registration in which they can be returned in the event of the application being unsuccessful.

12. As soon as possible after the date fixed for the submission of the applications, a meeting of the District Board shall be held for their consideration. The Chairman shall open the applications in the presence of the District Board, who shall thereupon proceed to make their selection.

13. On the selection being made, a resolution to that effect shall be recorded, and a copy thereof forwarded, together with the original application, certificates, and testimonials of the selected candidate, to the Commissioner for confirmation.

14. If the nomination be confirmed by the Commissioner, the Chairman of the District Board shall notify to the successful candidate that he is appointed District Engineer, and instruct him as to the date on which he is to take up his appointment and begin his duties.

15. If the nomination be not confirmed by the Commissioner, the Chairman shall call a meeting of the District Board to reconsider it, and make another selection from among the remaining candidates. The procedure laid down in Rule 13 shall then be repeated.

16. When the appointment has been finally settled, and the successful candidate has joined and entered upon his duties, the Chairman shall return the certificates and testimonials of the several candidates.

17. In the event of the appointment of District Engineer becoming vacant suddenly, by death or otherwise, without the notice prescribed in Rule 8, the Chairman of the District Board may make arrangements for the temporary performance of the duties of the office till the new District Engineer shall be appointed in accordance with the preceding rules.

*Duties and Powers of District Engineers.*

18. The District Engineer will be the officer in immediate charge of all the roads and buildings and other public works, the control of which is vested in a District or Local Board. He will arrange the details of their construction and be responsible for their custody and maintenance in efficient repair so far as the funds placed at his disposal permit. He will keep accurate plans of the land appertaining to all roads and buildings in his charge, and take prompt steps to prevent encroachments.

19. The District Engineer will receive positive orders only from the Chairman of the District Board. The duty of yielding implicit obedience to any orders so received must be clearly understood; but in the interpretation of general instructions he will act upon his own judgment.

20. The Subordinate Engineering staff of a District or Local Board will be under the immediate orders and control of the District Engineer, and all orders to them with reference to work should emanate from, or be issued through, the District Engineer.

21. The District Engineer will be responsible for the accuracy of all reports, plans, designs, specifications, and estimates prepared by him, and must attest them by his signature.

22. The District Engineer will pay strict attention to the economical application of all labour and materials used on works in his charge, and will be responsible for preventing the expenditure on any work exceeding the amount of the sanctioned estimate. He should also strive to bring economically into use, on all occasions, the articles procurable in the local markets and the natural products of the district.

23. The District Engineer must exact from his subordinates a correct performance of their duties and give them all proper instructions. He will furnish them with proper working drawings and written instructions as to the execution of any works they may be entrusted with, using additional precautions to prevent errors or accidents at a distance from the head-quarters of the district.

24. The District Engineer will frequently inspect outlying roads and works in progress, and see that the work carried on by his subordinates or contractors is sound and economical. When on tour he will keep a journal in which the distances travelled will be noted. He will also keep note-books in which will be entered daily any particulars with reference to works in progress which may call for remark, the dates of all inspections, the orders issued to subordinates, the check measurements taken, the accounts inspected, and generally any details concern-

ing his duties which may be worthy of remark. These note-books will be considered official records.

25. The District Engineer will be responsible that his accounts are regularly posted from day to day, and are kept in strict accordance with the rules made from time to time under section 138 (2) of the Act.

26. On the completion of any work, a completion report shall be submitted by the District Engineer to the Chairman; and any deviation from the design and estimate that may have been made during the construction of the work must be fully explained in it.

*Duties and Powers of Inspector of Local Works.*

27. The Inspector of Local Works will make frequent tours of inspection in the districts of the Commissioner's division to which he is appointed. He will not only minutely survey and report upon the state of the various works, whether completed or in progress in each district, but will carefully enquire into the system of management prevailing in respect to the preparation and cost of materials, the style of execution, the price of labour, and the rates of work. He will satisfy himself that building or road materials and other resources available in each district are brought into use in the most efficient and economical manner, and that the means of communication, projected or completed, are adapted to the requirements of the traffic.

28. The Inspector of Local Works will also, during his inspections, enquire into and report on the efficiency of the Engineering establishments employed under District or Local Boards.

29. The Inspector of Local Works will also carefully inspect the books of District Engineers and their subordinates and the arrangements and procedure for the primary accounts, and see that they are kept in the manner prescribed.

30. Besides his regular tours of inspection, the Inspector of Local Works will proceed to any place in his division whenever it may be necessary for him to report on any important design or work, or on any serious accident or threatened danger to any works, or on any calamity, actual or anticipated, the remedy for which may appear to be within the range of engineering skill.

31. Detailed reports of all his inspections shall be drawn up by the Inspector of Local Works for the information of the Commissioner, and a copy thereof, so far as may relate to a particular district, shall be forwarded by him to the District or Local Board concerned through the Magistrate of the District.

32. Although the detailed designs and estimates for works

will commonly be prepared by District Engineers, the arrangement and general plan of all important works should be concerted with the Inspector of Local Works, who will be responsible for the engineering character of every project that he passes on with his approval. The Inspector of Local Works may, if he see fit, himself prepare the designs for any work in his division. He will communicate freely and personally on all professional matters with District Engineers, and afford them the benefit of his advice in the performance of their duties.

33. The Inspector of Local Works will, in submitting to the Commissioner any reports, plans, estimates or other documents relating to the works of District Boards, invariably state his own opinion as to the suitability of the designs and reasonableness of the rates. He must also check the calculations in detail of all estimates and compare the quantities in the estimates with those shown on the drawings. If projects are sent up by District Boards without proper information, he will return them for such further information as the case may need.

34. The Office of the Inspector of Local Works will be located in the same place as that of the Commissioner of the Division, and he will correspond direct with District Boards regarding all matters in which he exercises powers assigned to him by these rules.

*Mode of preparation and submission of plans, designs, specifications, and estimates for works for approval and sanction.*

35. All estimates and projects for the construction or repair of buildings, roads, bridges, and other public works undertaken by District and Local Boards shall be classed under one or other of the two heads *Repairs* or *Original Works*, and shall be prepared in the forms prescribed in the Public Works Department Code, Volume I, Chapter VII (*fifth edition*), and submitted for the sanction of the District or Local Board in meeting. Estimates for *Repairs*, shall include all operations required to maintain works in proper condition, and estimates for *Original Works* all those which do not come under the classification of repairs.

36. The cost of every survey or preliminary operation other than those which can be carried out by the paid district establishment shall be considered to be an "original work," and shall be covered by a sanctioned estimate and a specific assignment of funds.

37. A revised estimate shall be prepared immediately there is reason to anticipate that an estimate will be exceeded by more than 10 per cent. of its total amount, or where consi-

derable alterations of the original estimate are desired, and it shall be submitted for the approval of the authorities whose sanction would be necessary if it were an original estimate.

38. In the case of all works of importance, the District Engineer shall submit a rough design for the approval of the Inspector of Local Works before preparing the detailed drawings and estimates.

39 All sanctions given by the District or Local Board shall be formally recorded in their proceedings.

40. Except in case of emergency, or to prevent damage or loss, no work shall be put in hand until an estimate for carrying it out has been sanctioned, and no proposal for the execution of any work shall be sanctioned by a District or Local Board, unless it be accompanied by a properly detailed estimate, and, when necessary, by properly prepared drawings showing fully the work proposed.

41. In the case of the following classes of estimates or projects, the sanction of the District or Local Boards shall be provisional only, and subject to the confirmation and approval of the authority indicated :—

- |                                                                                                                                                                                      |   |                                                                                                                                                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a). All projects for new works, the estimated cost of which amounts Rs. 25,000, or more.                                                                                            | } | Sanction of the Local Government in the Public Works Department to be obtained through the Inspector of Local Works and Commissioner of the Division. |
| (b). All projects for works which may affect or alter the course of any river which is navigable at any time of the year, or on either bank of which there is any public embankment. |   |                                                                                                                                                       |
| (c). All projects for embanked roads passing through country subject to floods or irrigated from canals                                                                              | } | Sanction of the Commissioner of the Division to be obtained through the Inspector of Local Works.                                                     |
| (d). All estimates for new works or repairs, the amount of which is Rs. 5,000, or more.                                                                                              |   |                                                                                                                                                       |
| (e). All estimates for expenditure under the provisions of section 79 of the Act except the planting of trees on the sides of roads.                                                 |   |                                                                                                                                                       |

The sanction of the District or Local Board to an estimate for an original work which forms part of a contemplated scheme, although such estimate may in itself be within the limit up to which the Board can sanction, shall be subject to the confirmation and approval of the same authority as the estimate for the whole scheme would be, and no such estimate for a part of a scheme shall be sanctioned unless the nature and approximate cost of the entire scheme is fully set forth in the report of the estimate.

When the sanction of the authority indicated is received, the provisional sanction of the District or Local Board shall be confirmed by a resolution to be formally recorded in their proceedings, and the execution of the work may thereafter be proceeded with in accordance with any provision that may be made for it in the budget of the year.

As amended by Notification of the 6th January 1888.

R. H. WILSON,

*Offg. Secretary to the Govt. of Bengal.*

## MODEL RULES UNDER SECTION 32 OF THE ACT.

### CLAUSE (a).

#### *Meetings.*

Rule 1. If the Chairman is temporarily absent from his duties, or if the office of Chairman is temporarily vacant, the duties of the Chairman under these rules shall be performed by the Vice-Chairman.

Rule 2. Meetings shall be either ordinary or special.

Rule 3. An ordinary meeting of the District Board shall be held on the day\* of every month :  
 \* "g." "first Monday,"  
 "last Saturday." Provided that if the day of any month falls on a gazetted holiday, or if for any other reason it is deemed inconvenient, the Chairman may fix another day for the ordinary meeting of the Board

Rule 4. A special meeting of the District Board may be called at any time by the Chairman. The Chairman shall be bound to call a special meeting on a requisition signed by one-fourth of the total number of members.

Rule 5. The subjects referred to in Rule 65 of Part IV of the General Rules, and in section 29 of the Act, shall be dealt with at special meetings only.

Rule 6. All other subjects which come within the province of the District Board may be dealt with at either ordinary or special meetings.

Rule 7. Meetings shall be held at the office of the District Board, or at such place as the Chairman may from time to time determine.

Rule 8. The notice under Rule 67 of the General Rules shall be sent by post or by such other method as may be convenient : Provided that if a local newspaper be published at the headquarters of the District Board, the Board, by a resolution duly passed, may decide that the publication of such notice in the newspaper in question shall be sufficient.

Rule 9. Notices of motions accompanied by *verbatim* drafts



must be sent to the Chairman, or, in the case of there being a Secretary, to the Secretary, in time to be included in the list of business for the next meeting. Notices received too late shall be inserted in the list of business of the next succeeding meeting.

Rule 10. A notice book shall be kept by the \_\_\_\_\_ of the Board, in which all notices of motions shall be entered. All such notices shall be dated and numbered as received.

*Adjourned Meetings.*

Rule 11. An adjourned meeting is not competent to transact any business save that which the original meeting left unfinished.

Rule 12. An adjourned meeting, being merely a continuation of the original meeting, does not require any fresh notice.

CONDUCT OF PROCEEDINGS AT MEETINGS, &c.

CLAUSE (b).

*Order of business.*

Rule 13. At ordinary meetings, the business shall be conducted in the following order:—

(a.) The minutes of the last ordinary meeting, and of any special meeting held since, shall be read and, if approved as correctly entered, shall be signed by the Chairman of such meeting.

(b.) Business postponed from the last ordinary meeting shall be considered.

(c.) A progress report of works shall be laid before the Board.

(d.) Letters and reports of Committees shall be read, and accounts and statements shall be considered and passed.

(e.) Motions of which due notice has been given to be discussed.

Rule 14. At a special meeting, only the business for which the meeting was called shall be considered: Provided that with the consent of the majority of the members present any other business may be considered.

Rule 15. In the event of any objection being raised to the manner in which any resolution has been recorded, the Chairman shall decide the question after reference to the original draft of the resolution, and if he finds the minute to be inaccurate, shall make the necessary correction in the minute book.

Rule 16. Unless by permission of the majority of the meeting, all subjects shall be discussed in the order in which they appear in the notice paper.

*Of motions and amendments.*

Rule 17. Every motion and amendment duly moved must be seconded, and until seconded no debate thereon can take place.

Rule 18. Every motion and amendment, after being reduced to writing, under Rule 74 of the General Rules, shall be signed by the proposer and seconder before being put to the vote.

Rule 19. Every amendment shall be so worded as to be capable of making an intelligible sentence either alone or in its proper place in an original motion, as the case may be, provided that no amendment can merely negative the original motion.

Rule 20. The President of the meeting may, for reasons to be recorded in writing and entered in the minutes of the proceedings—

(a.) Rule that a motion or amendment is illegal or out of order, and

(b.) Make such alterations in a motion or amendment as shall in his opinion render it legal, and in order ;

and may in case (a) refuse to put the motion or amendment to the meeting, and in case (b) refuse to put the motion or amendment to the meeting unless and until the proposer and seconder accept and sign the alterations so made

And the decision of the President shall be final.

Rule 21. After a motion has been moved and seconded, an amendment may be moved at any stage of the debate thereon.

Rule 22. On the discussion being concluded, in the event of several amendments having been proposed, the President shall put the last amendment to the vote first ; if it is negatived, he shall put the last preceding amendment, and lastly, the first amendment, and if all the amendments are lost, the original proposition shall be put to the vote

Rule 23. When a motion or an amendment has been put from the chair, and been declared by the President to be duly carried, no further proposals for amending the motion or amendment can be entertained.

#### *Of the right to speak.*

Rule 24. The President may require members to stand when they address the meeting.

Rule 25. The member who first addresses the meeting shall be entitled to be heard first, and should more than one member rise to address the meeting at the same time, the order of precedence shall be determined by the President.

Rule 26. Any member shall be at liberty to call the attention of the President to a point of order, even when a member is speaking. On a point of order being raised, the member addressing the meeting shall resume his seat until the question has been decided by the President. After the decision of the President, the same point of order cannot be raised again. Except as provided

by this rule, no member shall interrupt a speaker in possession of the meeting.

Rule 27. Except as provided in the last preceding rule, no member shall speak except to move or second a motion or amendment, or to support or oppose a motion or amendment which has been duly moved and seconded.

Rule 28. A speaker who has exhausted his right to speak on an original motion, may speak on any amendment being moved, as that raises a new question.

Rule 29. The mover of a motion or amendment shall in all cases have a right of reply, but otherwise no member shall speak more than once on the same motion or amendment, unless in explanation of some part of his original speech.

*Miscellaneous.*

Rule 30. Unless not less than two-thirds of the members of the Board consent by signing a requisition, no subject once finally disposed of can be reconsidered within six months.

Rule 31. When any business, of which notice has not been given, is considered at a meeting, the decision recorded or resolution adopted at such meeting shall be of no effect unless and until it is confirmed at the next succeeding ordinary meeting, or at a special meeting called expressly for the purpose.

Rule 32. For the purpose of taking into consideration business involving many details, the meeting may resolve itself into a Committee of the whole body. When this has been determined on, the rule prohibiting any person from speaking more than once on the same question shall be deemed suspended until the meeting resumes.

Rule 33. When a motion or amendment is put to the vote, the President or Secretary shall record against it, first, the names of members voting for it, and then the names of those voting against it.

Rule 34. Voting by proxy is prohibited; and no member may vote upon any motion or amendment unless he be present in person at the time when it is put to the vote.

Rule 35. The minutes shall contain a brief abstract of the discussion preceding each resolution.

*Of protests or dissents.*

Rule 36. Protests must be limited to a concise and definite statement of the motives which prompted the votes of members who voted in the minority on a given question.

Rule 37. Protests must be handed to the Chairman before the conclusion of the meeting at which a resolution protested against was passed

Rule 38. Protests duly made shall be appended to and published with the minutes.

*Of adjournments.*

Rule 39. It shall be competent to any member to move the adjournment of the debate or of the meeting in a speech not exceeding five minutes in duration.

Rule 40. When a motion for the adjournment of the meeting or of a debate is made, it shall be seconded without a speech, and put by the Chairman to the vote without debate or amendment.

Rule 41. No motion for the adjournment of the meeting or of a debate shall be admissible which proposes an adjournment beyond the next ordinary meeting.

CLAUSE (c).

*The custody of the common seal, and the purposes for which it shall be used.*

Rule 42. The common seal shall remain in the custody of the Chairman. Provided that if a Secretary has been appointed, the Chairman may by written order delegate the custody of the seal to the Secretary

Rule 43. The common seal shall be affixed to the following documents —

(a)—All deeds of sale or purchase executed by or on behalf of the District Board, and whether relating to moveable or immoveable property.

(b)—All written contracts entered into by the District Board.

(c)—The minutes of the proceedings of the Board.

(d)—The notices of meetings of the Board.

(e)—All receipts for money granted under the authority of the Board.

(f)—All notices to the public issued under the Act or the General Rules.

CLAUSE (d).

*Division of duties among the Members of the District Board.*

Rule 44. The District Board may from time to time appoint out of its members such and so many Committees either of general or special nature, and consisting of such number of

persons as they think fit, for any purposes which in the opinion of the Board can be conveniently regulated and managed by means of such Committees; but the acts of every such Committee shall be submitted to the Board for their approval.

Rule 45. There shall be the following General Committees of the District Board, viz. :—

- (1)—The Finance Committee.
- (2)—The Public Works and Ferries Committee.
- (3)—The Education Committee.
- (4)—The Medical and Sanitary Committee.
- (5)—The

Rule 46. The duties of the Finance Committee shall be as follows :—

- (a)—
- (b)—
- (c)—
- (d)—

Rule 47. The duties of the Public Works and Ferries Committee shall be as follows :—

- (a)—
- (b)—
- (c)—
- (d)—

Rule 48. The duties of the Education Committee shall be as follows :—

- (a)—
- (b)—
- (c)—
- (d)—

Rule 49. The duties of the Medical and Sanitary Committee shall be as follows :—

- (a)—
- (b)—
- (c)—
- (d)—

Rule 50. The duties of the Committee shall be as follows :—

- (a)—
- (b)—
- (c)—
- (d)—

Rule 51. The members of the General Committees shall hold office for one year only, but shall be eligible for reappointment.

Rule 52. Save in the case of illness, a member of a General Committee who, without the previous permission of the

District Board, shall fail to attend six consecutive meetings of such Committee, shall thereby cease to be a member, and the Committee shall apply to the Board to appoint another member in his place.

Rule 53. The District Board may from time to time delegate to one or more of its members the duty of inspecting any work which is being carried out under its orders, or any institution under its control and management.

*Proceedings of Committees.*

Rule 54. A Committee may meet and adjourn as it thinks proper.

Rule 55. The quorum of a Committee shall be three members.

Rule 56. A Committee may elect a Chairman of its meetings.

Rule 57. If no Chairman is elected, or if the Chairman elected is not present at the time for holding any meeting, the members present shall choose one of their number to be Chairman.

Rule 58. Every question at a meeting shall be determined by a majority of the votes of the members present and voting on that question.

Rule 59. In case of an equal division of votes, the Chairman shall have a second or casting vote.

CLAUSE (e).

*Powers of Chairman.*

Rule 60. The Chairman of the District Board is empowered to enter into contracts relating to works and expenditure sanctioned by the Board in respect of sums or involving values not exceeding Rs 500.

Rule 61. The general superintendence and control of the establishment maintained by the District Board shall vest in, and be exercised by, the Chairman.

Rule 62. Subject to any resolution which the District Board may from time to time pass, the general powers of control and administration which are vested or may be vested in the Board under Part III, Chapter I of the Act, shall be exercised by the Chairman.

Rule 63. Subject to any resolution which the Board may pass from time to time, the general powers of control over the proceedings of inferior local authorities, conferred on the District Board by the Act, may be exercised by the Chairman.

Rule 64. The powers of the Vice-Chairman shall be such as the Chairman may by an order in writing delegate to him from time to time. Such powers may at any time be withdrawn or modified by an order similarly made: Provided that nothing done by the Vice-Chairman with the express or implied consent of the Chairman shall be invalid for want of such written order.

CLAUSE (f).

*The persons by whom receipts shall be granted for money received under the Act.*

Rule 65. Receipts for money received under the Act shall be signed by the Chairman, Vice-Chairman, or, when a Secretary has been appointed, by the Secretary of the Board.

CLAUSE (g).

*The duties, appointment, leave, suspension and removal of the officers and servants of the Board.*

Rule 66. Subject to the scale of establishment laid down by the District Board, the Chairman may appoint and dismiss all officers whose salary is less than Rs. 50 per month: Provided that all dismissals must be reported to the next ordinary meeting for confirmation.

Rule 67. Except as otherwise provided in the Act or the General Rules, the appointment and dismissal of officers and servants of the Board employed on a salary of Rs. 50 or upwards shall rest with the District Board.

Rule 68. Except as otherwise provided in the General Rules, the Chairman may suspend any officer or servant of the Board for misconduct or incompetence: Provided that the matter shall be laid before the Board for orders at their next ordinary meeting.

Rule 69. Casual leave for a period not exceeding seven days at any one time, or 15 days in 12 months, and leave on medical certificate for any period not exceeding a month, may be granted by the Chairman with or without pay, and with or without the appointment of a substitute, to any officer or servant of the Board. All other leave must be granted by the Board at a meeting.

Rule 70. Except as otherwise provided by the Act and the General Rules, all persons employed by the Board, whose services may be no longer required, shall be liable to discharge after the receipt of one month's notice, or one month's pay in lieu of notice; and no such person shall withdraw from

the duties of his office without having given previous notice for the period of one month, on pain of forfeiture of a month's salary

Rule 71. The Board shall have power to inflict for neglect of duty a fine not exceeding one month's pay upon any officer or servant employed by them. This power shall be exercised by the Chairman; provided that the orders of the Chairman inflicting a fine on an officer drawing Rs. 50 per mensem or upwards shall be submitted for the confirmation of the Board at its next ordinary meeting.

Rule 72. All officers and servants employed by the District Board shall, if required, furnish such security as the Board may from time to time fix.

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# APPENDIX.

## ACT No. I OF 1885.

*An Act to regulate Ferries in Bengal.*

( Received the assent of the Lieutenant Governor on the 6th April 1885, and of the Governor-General on the 15th May 1885. )

WHEREAS it is expedient to regulate Ferries within the territories subject to the Lieutenant-Governor of Bengal, It is enacted as follows —

Preamble.

Short title.

Extent and commencement of Act

1. This Act may be called "The Bengal Ferries Act, 1885."

2 It shall extend to all the territories subject to the Lieutenant-Governor of Bengal :

And it shall come into force on such date as the Lieutenant-Governor may, by notification in the *Calcutta Gazette*, appoint in this behalf.

By Notification of the 11th June 1885, it was directed that the Act should come into force on the 1st August 1885.

3. Regulation VI of 1819 and Bengal Act I of 1866 are hereby repealed ; but all determinations, declarations, orders and rules made, engagements entered into, and securities taken, under such Regulation and Act, shall be deemed to be respectively made, entered into, and taken under this Act.

4. Nothing in this Act contained shall apply to any ferry Act not to apply to deemed or declared to be a municipal ferry municipal ferries. under the provisions of the Bengal Municipal Act, 1884.

By section 148 of the Bengal Municipal Act, B. C., Act III of 1884, the Local Government may, with the consent of the Commissioners, make over to them any existing public ferry within, or adjacent to the limits of the municipality. Such ferry shall be deemed to be a municipal ferry, and the profits, or such portion thereof as may be agreed between Government and the Commissioners, shall be credited to the municipal fund. By section 149 the Commissioners may, with the sanction of the Local Government, declare any other ferry (*v.c.*, any private ferry) similarly situated, to be a municipal ferry ; and the profits therefrom shall thenceforward be carried to the municipal fund.

Interpretation.

'Commissioner.'

5. In this Act, unless there be something repugnant in the subject or context,—  
'Commissioner' means the Commissioner of a Division.

- 'Ferry' includes a bridge of boats, pontoons or rafts, a swing-bridge, a flying bridge, a temporary bridge, and a landing stage.
- 'Notification.' means a notification published in the *Calcutta Gazette*.
- 'Private ferries' includes all ferries other than those declared to be public ferries, or established as such, under section six of this Act.
- 'Private ferries.'

## PART I.

### PUBLIC FERRIES.

Power to declare, establish, define, and discontinue public ferries.

6. It shall be lawful for the Lieutenant-Governor from time to time to—

(a) declare what ferries shall be deemed public ferries, and the respective districts in which, for the purposes of this Act, they shall be deemed to be situate,

(b) take possession of a private ferry, and declare it to be a public ferry ;

(c) establish new public ferries where, in his opinion, they are needed ;

(d) define the limits of any public ferry ;

(e) change the course of any public ferry, and

(f) discontinue any public ferry which he deems unnecessary.

Every such declaration, establishment, definition, change or discontinuance, shall be made by notification :

Provided that, when any alteration in the course or in the limits of a public ferry is rendered necessary by changes in the river on which such ferry is established, such alteration may be made, by an order in writing, by the Magistrate of the District.

The power specified in the last clause will vest in the District Board in regard to any ferry placed under its management. See section 35.

Control of public ferries vested in the Magistrate of the District.

7. The control of all public ferries shall be vested in the Magistrate of the District, subject to the direction of the Commissioner.

This power will not vest in the District Board. See section 35.

8. The immediate superintendence of every public ferry shall be vested in the Magistrate of the District in which such ferry is situated, or in such other officer as the Lieutenant-Governor may, from time to time, either by name or by official designation, appoint.

Superintendence of public ferries.

And such Magistrate or officer shall, except when the tolls at such ferry are leased, make all necessary arrangements for the supply of boats for such ferry, and for the collection of the authorized tolls leviable thereat

These powers will be conferred in the District Board in regard to all ferries placed under its management. See section 35.

9. The tolls of any public ferry may, from time to time, be leased by public auction for such term as the Magistrate of the District in which such ferry is situated may, with the approval of the Commissioner, direct.

Ferry tolls may be leased by auction.

The Magistrate of the District or the officer authorized by him to conduct such auction may, for sufficient reason to be recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction.

The lessee of the tolls of every ferry which have been leased under this section shall execute a contract, setting forth the conditions on which the tolls of such ferry are to be held, and shall give security for its due fulfilment.

Execution of contract by lessee

These powers will also, under section 35, be vested in the District Board, in respect of all ferries under its management.

Bengal Government Circular No. 5 T—M of the 12th May 1884 points out "that as the kabuliyats in the case of the farming of ferries are executed in favour of Government, no duty is required to be paid on them under clause 18, Schedule II of the Stamp Act; and as no document is given in exchange for the kabuliyats, there is nothing which the farmers are bound to stamp."

10. When the tolls of a public ferry have been duly leased, the lessee and every servant of the lessee shall be deemed to be legally bound to conform to the rules made under this Act for the management and control of such ferry.

Lessee of the tolls of a public ferry and his servants bound to conform to rules.

11. On the requisition of the Magistrate of the District, the person in charge of a public ferry situate in such district shall maintain at one or more places, in addition to the place at which the said public ferry is established, and within two miles thereof, such number of subsidiary ferries as may seem to the Magistrate to be necessary for the public convenience: and all the provisions contained in this Act in regard to the management and control of public ferries shall be deemed applicable to any subsidiary ferry maintained under the requisition of the Magistrate.

Provision for the establishment of subsidiary ferry.

By section 35, these powers will vest in the District Board, as regards all ferries made over to its management.

Recovery of arrears  
from lessee.

12. All arrears due by the lessee of the tolls of a public ferry on account of his lease; any pecuniary forfeiture for breach of contract inserted in the deed of contract or conditions of sale by public auction; and

all sums due from the lessee on the surrender of his lease under section fourteen,

may be recovered from the lessee or his surety (if any) as a demand under Bengal Act VII of 1880, or any other Act at the time being in force for the recovery of public demands.

Bengal Act VII of 1880, is the Public Demands Recovery Act.

13. The lease of the tolls of any public ferry shall be liable to be cancelled at once by the Magistrate

Power to cancel lease.

of the District in which such ferry is situated, if it shall appear to such Magistrate that the lessee has failed to make due provision for the convenience or safety of the public within fifteen days after being required to do so by a notice in writing from such Magistrate.

These powers will be exercised by the District Board in regard to ferries placed under its management. See section 35.

14. The lessee of the tolls of a public ferry may surrender his lease on the expiration of one month's

Surrender of lease.

notice in writing to the Magistrate of the District in which such ferry is situated of his intention to surrender such lease, and on payment of such reasonable compensation as the Magistrate may, with the approval of the Commissioner, in each case direct.

These powers will also vest in the District Board, under section 35, in regard to ferries under its control.

The following extract from the proceedings of the Council has reference to this section. —

"The Hon. JOY PROKASH LALL moved that the following proviso be added to section 13, now (14) —

'Provided that such compensation shall be demanded only in cases where the lessee fails to show sufficient or satisfactory grounds for surrendering his lease.'

"He said that the reason why he proposed this amendment was that there might be cases in which the lessee was obliged to surrender his lease owing to unavoidable and unforeseen circumstances; such as sudden silting up of the bed and sudden change in the course of the river. Of course in cases of reckless or wanton relinquishments, a demand for compensation should be made; but this amendment, if carried, would exempt an honest lessee from paying compensation when he was prevented from continuing to carry on the contract by acts of God or circumstances over which he had no control.

"The Hon. Mr. MACAULAY said he ventured to think this amendment was not necessary. The section had been inserted in the Bill to meet a very serious difficulty which from time to time occurred where a ferry lessee suddenly relinquished his lease, and caused great inconvenience

to the public, as well as loss to the public revenue. It was to be assumed from the wording of the section, that the Magistrate would always make inquiries, and where the lease was surrendered on honest grounds, there would be no danger of the Magistrate attempting to require compensation from the lessee.

"The Hon. THE ADVOCATE-GENERAL suggested that the intention of the Hon. Member might be met by the insertion of the word 'reasonable' before 'compensation,' it was implied that the compensation should be reasonable, but the introduction of the word would act as a safeguard

"The Hon JOY PROKASH LALL accepted the suggestion and withdrew his motion, and it was then agreed that the word 'reasonable' be inserted before 'compensation' in line 7 of the section."

P. C. April 4th, 1885.

15. The Magistrate of the District, with the approval of the Commissioner, may, from time to time, make rules consistent with this Act—

(a) for the management of all public ferries within such district, and for regulating the traffic at such ferries ;

(b) for regulating the time and manner at and in which, the terms on which, and the person by whom, the tolls of such ferries may be leased by auction ;

(c) for compensating persons who have compounded for tolls payable for the use of any such ferry when such ferry has been discontinued before the expiration of the period compounded for, and

(d) generally to carry out the purposes of this Act :

And when the tolls of a ferry have been leased under section nine, such Magistrate may, from time to time, with such approval as aforesaid, make additional rules consistent with this Act—

(e) for collecting the rents payable for the tolls of such ferries ;

(f) for regulating the returns of traffic to be, from time to time, submitted by the lessee of such ferries ;

(g) in cases in which the communication is to be established by means of a bridge of boats, pontoons or rafts, or a swing-bridge, flying-bridge or temporary bridge, for regulating the time and manner at and in which such bridge shall be constructed and maintained, and opened for the passage of vessels and rafts through the same, and

(h) in cases in which the traffic is conveyed in boats, for regulating

the number and kinds of such boats and their dimensions and equipment ;

the number of the crew to be kept by the lessee for each boat ;

the maintenance of such boats in good condition ;

the hours during which, and the intervals within which, the lessee shall be bound to ply; and

the number of passengers, animals and vehicles, and the bulk and weight of other things that may be carried in each kind of boat at one trip.

And may, from time to time, with such approval as aforesaid, repeal or alter such rules.

Rules made under this section shall be subject to the control of the Lieutenant-Governor, and shall be published in the *Calcutta Gazette* in such manner as the Lieutenant-Governor directs, and shall thereupon have the force of law.

The power of making rules conferred upon the Magistrate of the District by this section, will be vested in the District Board, in regard to all ferries placed under its management. See section 35.

16 No person shall, except with the sanction of the Magistrate of the District, maintain a ferry to ply within two miles of public ferry without sanction. or from any point within a distance of two miles from the limits of a public ferry :

Provided that in the case of any specified public ferry, the Lieutenant-Governor may, by notification, reduce or increase the said distance of two miles to such extent as he thinks fit :

Provided also that nothing hereinbefore contained shall prevent persons keeping boats to ply between two places, one of which is without, and one within, the said limits, when the distance between such two places is not less than three miles, or shall apply to boats which the Magistrate of the District expressly exempts from the operation of this section.

"The Hon. JOY PROKASH LALL moved that in line 3 of section 15 [now 16], the words 'for crossing a river or stream for hire' be inserted after the word 'ferry.' He said that it often happened that passengers were taken by boat from one ghât (landing place) to another on the same side of the river which was within three miles from the limits of a public ferry; there were also cultivators who lived on one side of the river bank and carried on cultivation on the other side, and for the sake of economy of money and time they kept boats for their use, but not for hire. It was not clear whether the restriction imposed by this section would be applicable to such persons. If it was intended to apply to them, it would cause great hardship to the agricultural classes who cultivated lands in dearas or islands.

"The Hon. Mr. MACAULAY said he was unable to accept the amendment. The Select Committee advisedly introduced the word 'ferry' in order that the ordinary meaning of the word might be attached to it, namely, the idea of crossing the river. The objection which had been taken in Select Committee by the Hon. Kumar Balkanto Nath Dé, as to the case of persons being taken from one ghât to another on the same side of the river, was considered, and the word 'ferry' was used,

because it meant appliances for crossing the river. The words proposed to be inserted would be mere surplusage.

"The Hon. THE ADVOCATE-GENERAL observed that the introduction of the proposed words would rather introduce a difficulty. He thought the word 'ferry' was quite sufficient; it was a word the meaning of which was well known, and meant plying for hire."

"The motion was put and negatived."

P. C. April 4th, 1885

If the public ferry is under the management of the District Board, these powers will vest in the Board. See section 35.

17. Claims for compensation for any loss sustained by any person in consequence of a private ferry being taken possession of or a new public ferry, or subsidiary ferry, being established under section six or section eleven, shall be enquired into by the Magistrate of the District in which such ferry is situated, who shall, with the approval of the Commissioner, award compensation to any person who may appear justly entitled thereto. Such compensation shall be calculated upon an estimate of the annual net profit actually realized by such person from such ferry on an average of the five years next preceding such declaration, and shall in no case exceed the amount of fifteen times such net annual profit.

"The Hon. JOY PROKASH LALL moved that in line 15 of section 16 [now 17], the word 'twenty' be substituted for 'fifteen,' and the following words be added to the section:—'If the owner is dissatisfied with the award, the matter shall be referred to the Civil Court for adjudication.' He said that the Land Acquisition Act gave fair compensation for land taken for public purposes. The standard of compensation for private ferries in the Bill was too low, and it would only approach to fairness if the amount was raised to twenty times the net annual profit. With regard to the second portion of the amendment, it seemed to him to be only fair that the owner of a private ferry should not be bound by the award which the Magistrate might summarily make of the compensation to be awarded on the resumption of a private ferry. The amendment proposed was based on the same principle as was laid down in the Land Acquisition Act. Private ferries were as valuable and remunerative as landed property, and he did not see why a different principle should be followed in respect of such property from that enunciated in the Land Acquisition Act. He observed that the India Act XVII of 1878 did not provide that in case of disputes the matter should be referred to the Civil Court for adjudication, possibly because, with the exception of a few districts, the North-Western Provinces were not permanently settled like Bengal; but at the same time that Act provided that the award should be submitted for the consideration of the Local Government. In Bengal, he thought that in cases where the award of a Magistrate was not accepted by the owner, the matter ought to be referred to the Civil Court in the same way as a land acquisition case was referred to such Courts; or, if he was not out of order, he would propose to substitute for the above amendment, that the award should be submitted for the consideration of the Lieutenant-Governor.

"The Hon. Mr. MACAULAY said the Select Committee had merely reproduced the provisions of the existing Act (Bengal Act I of 1866) in which the amount of compensation was fixed at a sum not exceeding fifteen times the annual profit. When the Hon. Member proposed to alter that limit, it was reasonable that he should have laid before the Council instances in which the limit of compensation had been insufficient. As far as his own experience went, he had no reason to suppose that there was any reasonable ground for increasing the limit. Unless, therefore, the Hon. Member could cite any such instances, he would ask the Council to reject the amendment. Neither could he accept the second amendment. He thought, however, that it would be right to make the wording of this section conform with section 13 by making the award of the Magistrate subject to the approval of the Commissioner of the Division. He thought that in small matters of this kind an appeal should lie to the Commissioner, and not to the Civil Court or to the Lieutenant-Governor. The existing law left the amount of award to the discretion of the Magistrate. But a case had come up about two years ago in which, on a petition from the zemindar concerned, the Lieutenant-Governor called for the papers, and after inquiry into the matter, gave a higher award; the Lieutenant-Governor could always in the exercise of his executive power interfere when it was represented to him that any injustice had been done.

"His Hon. THE PRESIDENT observed that he had a strong objection to the amendment. He would deprecate giving any power of interference to the Civil Court unless such a power existed under the present law. Then, again, it was not clear under the proposed amendment who should 'refer' the case to the Civil Court, and if it was intended that the owner of the ferry should have a right to appeal to the Civil Court, the form of the amendment would require alteration. But on the principle that the present law up to date had not allowed the Civil Court to interfere, he thought it was too late to allow a form of interference which must lead to complications and delays. With regard to the alternative proposal, that the matter should be left to the disposal of the Lieutenant-Governor, he thought it was very undesirable that the Lieutenant-Governor should be called upon to interfere. Where serious and palpable injury was done, and it was brought to the notice of the Lieutenant-Governor by petition or otherwise, it was always in his power, as had been observed by the Hon. Member in charge of the Bill, to call for the papers, and, after inquiry, to decide what steps should be taken in the matter. But that was a very different thing from requiring the Lieutenant-Governor to inquire into the merits of every case. He thought the investigation and security which the Hon. Mover of the amendment desired would be met by placing the power of approval and sanction in the hands of such a high executive authority as the Commissioner of the Division."

P. C. *April 4th, 1885.*

The powers of the Magistrate of the District under this section, cannot be conferred upon the District Board. See section 35.

18. Tolls, according to such rates as may, from time to time,  
       be fixed by the Magistrate of the District  
 Tolls.                       with the approval of the Commissioner,  
 shall be levied on all persons, animals, vehicles, and other things  
 crossing any river by a public ferry, and not employed or trans-  
 mitted on the public service :



Provided that the Lieutenant-Governor may, from time to time, declare that any persons, animals, vehicles or other things shall be exempt from payment of such tolls.

Where the tolls of a ferry have been leased under section nine, any such declaration, if made after the date of the auction, shall entitle the lessee to such abatement of the rent payable in respect of the tolls as may be fixed by the Magistrate of the District under this section.

The powers conferred upon the Magistrate of the District by this section, will be exercised by the District Board, in respect of ferries placed under its management. See section 35.

19. The lessee or other person authorized to collect the tolls of any public ferry shall affix a table of such tolls, legibly written or printed in the vernacular language, and also, if the Commissioner so directs, in English, in some conspicuous place near the ferry ;  
 and shall be bound to produce, on demand, a list of the tolls signed by the Magistrate of the District, or such other officer as he appoints in this behalf.

List of tolls.

If the ferry has been placed under the management of the District Board, the list must be signed by such officer as the Board may appoint in that behalf. This follows from section 35.

20. Except as provided by section thirty-five, all tolls, rents, and compensation received by or on behalf of the Government, and all fines levied under this Act, shall be appropriated, in the first instance, towards the payment of all charges incurred in carrying out the provisions of this Act, and the surplus, if any, shall be credited to such fund as the Lieutenant-Governor may, from time to time, direct.

The exception is where the proceeds have been ordered to be credited to the District Fund.

21. It shall be lawful for the Magistrate of the District in which a public ferry is situated, with the approval of the Commissioner, from time to time to fix rates at which any person may compound for the tolls payable for the use of such ferry.

Compounding for tolls.

This power will vest in the District Board in regard to ferries placed under its management. See section 35.

## PART II.

## PRIVATE FERRIES.

22. The Commissioner may, from time to time, make rules, consistent with this Act, for the maintenance of order, and for the safety of passengers and property, at private ferries situated in his division.

Power to make rules in regard to private ferries. Rules made under this section shall be subject to the control of the Lieutenant-Governor, and shall be published in the *Calcutta Gazette* in such manner as the Lieutenant-Governor directs, and shall thereupon have the force of law.

It will be observed the scope of the rules is limited to the maintenance of order and the safety of passengers and property. It is not intended that there should be any power of regulating the tolls to be charged at private ferries. The Draft Bill contained a provision that the tolls charged at private ferries should not exceed the highest rates fixed for similar public ferries. The section containing the provision in question was, however, omitted in Council.

## PART III.

## PENALTIES AND CRIMINAL PROCEDURE.

23. Every lessee or other person authorized to collect the tolls of a public ferry, who neglects to affix and keep in good order and repair the table of tolls mentioned in section nineteen,

Penalty for breach of provisions as to table of tolls, list of tolls, and return of traffic. or who wilfully removes, alters or defaces such table, or allows it to become illegible,

or who fails to produce on demand the list of the tolls mentioned in section nineteen,

and every lessee who neglects to furnish any return required under section fifteen,

shall be punished with fine which may extend to fifty rupees.

24. Every such lessee or other person as aforesaid, asking, or taking more than the lawful toll, or without due cause delaying any person, animal, vehicle or other thing, shall be punished with fine which may extend to one hundred rupees.

25. Every person breaking any rule made under section fifteen or section twenty-two shall be punished with imprisonment for a term which may extend to three months, or

Penalty for breach of rules made under sections 15 and 22.

with fine which may extend to two hundred rupees, or with both.

26. When any lessee of the tolls of a public ferry makes default in the payment of the rent payable in respect of such tolls, or has been convicted of an offence under section twenty-five, or, having been convicted of an offence under section twenty-three or section twenty-four, is again convicted of an offence under either of those sections, the Magistrate of the District may, with the approval of the Commissioner, cancel the lease of the tolls of such ferry, and make other arrangements for its management during the whole or any part of the term for which the tolls were leased

The power of cancelling the lease of any ferry under its management will vest in the District Board. See section 35.

Penalties on passengers offending. 27. Every person crossing by any public ferry who refuses to pay the proper toll : and every person—

who, with intent to avoid payment of such toll, fraudulently or forcibly crosses by any such ferry without paying the toll, or

who obstructs any toll-collector or lessee of the tolls of a public ferry, or any of his assistants, in any way in the execution of their duty under this Act, or

who, after being warned by any such toll-collector, lessee or assistant not to do so, goes, or takes any animals, vehicles or other things, into any ferry-boat, or upon any bridge at such a ferry, which is in such a state or so loaded as to endanger human life or property, or

who refuses or neglects to leave, or remove any animals, vehicles, or goods from any such ferry-boat or bridge on being requested by such toll-collector, lessee or assistant to do so, or

who moors any boat, raft, or other substance to, or in any way obstructs, any part of a public ferry,

shall be punished with fine which may extend to fifty rupees.

28. Whoever conveys for hire any passenger, animal, vehicle or other thing in contravention of the provisions of section sixteen, shall be punished with fine which may extend to fifty rupees.

Penalty for plying within public ferry-course without license.

29. Where the tolls of any public ferry have been leased under the provisions hereinbefore contained, the whole or any portion of any fine realized under section twenty-seven or section twenty-eight may, notwithstanding anything contained

Fines payable to lessee.

in section twenty, be, at the discretion of the convicting Magistrate or Bench of Magistrates, paid to the lessee.

30. Whoever navigates, anchors, moors or fastens any vessel  
 Penalty for rash or raft, or stacks any timber, in a manner  
 navigation and stack- so rash or negligent as to damage a public  
 ing of timber. ferry, shall be punished with imprisonment  
 for a term which may extend to three months, or with fine which  
 may extend to five hundred rupees, or with both; and the  
 toll-collector or lessee of the tolls of such ferry, or any of his  
 assistants, may seize and detain such vessel, raft, or timber,  
 pending the inquiry and assessment hereinafter mentioned.

31. The police may arrest without warrant any person com-  
 Power to arrest with- mitting an offence against section twenty-  
 out warrant. seven or section thirty.

32. Every Magistrate or Bench of Magistrates trying any  
 Magistrate may assess offence under this Act may inquire into  
 damage done by offend- and assess the value of the damage (if any)  
 er. done or caused by the offender to the ferry  
 concerned, and shall order the amount of such value to be paid  
 by him in addition to any fine imposed upon him under this Act;  
 and the amount so ordered to be paid shall be leviable as if it  
 were a fine, or when the offence is one under section thirty by  
 the sale of the vessel, raft or timber causing the damage, and  
 of anything found in or upon such vessel or raft.

The Commissioner may, on the appeal of any person deeming  
 himself aggrieved by an order under this section, reduce or remit  
 the amount payable under such order.

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## PART IV.

### MISCELLANEOUS.

33. On the cancellation or surrender of a lease, the Magistrate  
 Power to take posses- of the District may take possession of all  
 sion of boats and other boats and other appliances which have been  
 appliances on surren- used by the lessee in the working of the  
 der or cancellation of ferry; and may either retain the same  
 lease. permanently on payment of a fair price to  
 the proprietor, or may retain them for such time as may be  
 necessary, not exceeding three months, until he can make  
 arrangements for such other boats and appliances as may be  
 necessary, in which case the Magistrate of the District shall pay  
 a fair sum to the owners for the use of the said boats and  
 appliances:

Provided that within a week of taking such possession, the Magistrate of the District shall be bound to give notice to the said lessee of his intention to retain the said boats and appliances permanently, or for a period to be specified in the notice.

"The Hon. JOY PROKASH LALL moved that in line 7 of section 33, the words 'either retain the same permanently on payment of a fair price to the proprietor or' after the word 'may,' be omitted, and that the words 'paying such compensation for the use thereof as the Lieutenant-Governor may in each case direct' be inserted after the word 'them' in line 9 of the same section. He said that it would be very hard to retain the vessel and other appliances permanently, if the owner did not like to part with his property. The Act of the Government of India did not contain such a provision, but at the same time it had a provision that payment of compensation for the use of the vessel and other appliances should be given as the Lieutenant-Governor might direct.

"The Hon. Mr. MACAULAY said that there was a certain amount of plausibility in this amendment, and at first sight he was inclined to consider it favourably. His Hon. Friend, Colonel Trevor, had, however, informed him that it was a well-known fact that in all contracts for the execution of public works, on the surrender of the contract, the person in possession was at liberty to take over all the contractor's plant at a fair value. Therefore, in providing that on the lessee of a ferry failing to conclude his lease, the Magistrate, or the District Board when the management of ferries was made over to those bodies under section 35, might take possession of all boats and other appliances which had been used by the lessee in the working of the ferry, the Council was only following the ordinary practice in contracts made by the Public Works Department.

"The Hon. Mr. REYNOLDS said it seemed to him that the amendment would work very often to the disadvantage of the proprietor. Under the proposed amendment, it would be absolutely illegal for the Magistrate to take over the boats and appliances, even if the proprietor was willing to sell them. In the majority of cases the proprietor would, no doubt, be willing to sell them at a fair price, but the Hon. Member would make it absolutely illegal for him to do so.

"The motion was put and negatived."

P. C. April 4th, 1885.

34. When any boats or their equipments, or any materials of appliances suitable for setting up a ferry, are emergently required for facilitating the transport of officers or troops of Her Majesty on duty, or of any other persons on the business of Her Majesty, or of any animals, vehicles or baggage belonging to such officers, troops or persons, or of any property of Her Majesty, the Magistrate of the District may take possession of and use the same (paying such compensation for the use thereof as the Lieutenant-Governor may in each case direct) until such transport is completed.

35. It shall be lawful for the Lieutenant-Governor to order Management may that any public ferry situated in any be vested in District district in which a District Board has been Board. established under the provisions of the Bengal Local Self-Government Act of 1885 shall be managed by such District Board : and such District Board shall have all the powers vested in the Magistrate of the District under this Act, except the powers specified in sections seven, seventeen, and thirty-two, and the Lieutenant-Governor may further order that all or any part of the proceeds of such ferry and all or any part of the fines levied, and compensation received, under this Act in respect thereof, be paid into the District Fund.

And thereupon such ferry shall be managed, and such proceeds, fines, and compensations shall be paid accordingly.

The Lieutenant-Governor may, from time to time, vary or annul any order made under this section.

No powers are vested in the Magistrate of the District by section thirty-two. That section confers certain powers on a Magistrate or Bench of Magistrates trying an offence under this Act. Those powers are evidently judicial, and as such could not be conferred on a Board which does not exercise judicial powers. There appears to be some mistake in the matter.

36 The Lieutenant-Governor may, from time to time, delegate, under such restrictions as he Delegation of powers. thinks fit, any of the powers conferred on him by this Act to any Commissioner or Magistrate of a District, or to such other officer or authority as he thinks fit, by name or by official designation.

## ACT No. V of 1880.

[AS AMENDED BY ACT No. II OF 1887.]

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.  
(Received the assent of the Lieutenant-Governor on the 12th April 1880, and of the Governor-General on the 17th May 1880.)

*An Act to make Vaccination compulsory.*

WHEREAS it is expedient to make vaccination compulsory in the Town, Port, and Suburbs of Calcutta, and in other towns and selected local areas, Preamble. in the territories administered by the Lieutenant-Governor of Bengal to which this Act may be hereafter extended : It is hereby enacted as follows :—

PRELIMINARY.

1. This Act may be called "The Bengal Vaccination Act, 1880,"
- Short title
- It applies in the first instance only to the Town, Port, and Suburbs of Calcutta as hereinafter defined:
- Extent.
- Power to extend Act to towns and local areas.
- But the Lieutenant-Governor may, by notification published in the *Calcutta Gazette*, declare his intention to extend this Act, or any of its provisions, to any town or selected local area in the territories administered by him.
- Any inhabitant of such town or area objecting to such extension.
- Objection to such extension may, within six weeks from the said publication, send his objection in writing to the Secretary to the Government of Bengal, and the Lieutenant-Governor shall take such objection into consideration.
- When six weeks from the said publication have expired, the Lieutenant-Governor, if no such objections have been sent as aforesaid, or (where such objections have been so sent in) if in his opinion they are insufficient, may, by like notification, effect the proposed extension.
- Procedure thereon.
- The Lieutenant-Governor shall cause the substance of any notification mentioned in this section to be proclaimed and notified within the town or area affected by the same, in the vernacular of such town or area, by such means, and in such manner, as he may direct.
- This Act shall come into force from the day on which it may be published in the *Calcutta Gazette* with the assent of the Governor-General; but its operation in any place may at any time be suspended by the Lieutenant-Governor by notification in the said *Gazette*.
- Commencement
2. In this Act—unless there be something repugnant in the subject or context—
- Interpretation-clause.
- 'Town of Calcutta.'
- 'Town of Calcutta' includes all places within the local limits of the ordinary original jurisdiction of the High Court of Judicature at Fort William in Bengal:
- 'Port of Calcutta' means the Port of Calcutta subject to the jurisdiction of the Commissioners appointed under Bengal Act V of 1870:
- 'Port of Calcutta.'
- 'Suburbs of Calcutta' means the suburbs defined by the notification of the 10th September 1877, and published in the *Calcutta Gazette* of the 26th September 1877:
- 'Suburbs of Calcutta.'
- 'Parent' includes the father and mother of a legitimate child, and the mother of an illegitimate child:
- 'Parent.'

'Guardian' means any person to whom the care, nurture or custody of any child falls by law, or by natural right or recognized usage, or who has accepted or assumed the care, nurture, or custody of any child, or to whom the care or custody of any child has been entrusted by any authority lawfully authorized in that behalf :

'Public vaccinator' means any vaccinator appointed under this Act, or any person duly authorized to act for such public vaccinator :

'Medical practitioner' means any person duly qualified by a diploma, degree, or license, to practise in medicine or surgery, or specially licensed by the Lieutenant-Governor to practise vaccination and grant certificates under the provisions of this Act.

"Unprotected child" means a child who has not been protected from small-pox by having had that disease either naturally or by inoculation, or by having been successfully vaccinated, and who has not been certified under the provisions of this Act to be insusceptible of vaccination :

'Unprotected person' includes a child who has no parent or guardian, and means a person who has not been protected from small-pox by having had that disease either naturally or by inoculation, or by having been successfully vaccinated, and who has not been certified under the provisions of this Act to be insusceptible of vaccination.

'Section.' 'Section' means a section of this Act.

'Vessel.' " 'Vessel' includes anything made for the conveyance by water of human beings or of property."

### VACCINATION OF CHILDREN.

3. The parent or guardian of every child born in any place to which this Act applies as above provided, or may hereafter be extended, shall within one year after the birth of such child ; and the parent or guardian of every unprotected child under the age of fourteen years brought to reside, whether temporarily or permanently, in such place aforesaid shall, within six months after such child's arrival in such place, or if the child be at the time of its arrival less than one year old, within one year and three months after its birth ; and
- Parent or guardian of children born in compulsory limits,
- and of unprotected children brought to reside in such limits,



the parent or guardian of every unprotected child living in or living in such such place at the date of this Act coming limits at the date of this into force therein, and whose age at such Act coming into force, date exceeds one year, but does not exceed fourteen years, shall, within six months from the said date, take it, or cause it to be taken, to a public vaccine station to be vaccinated, or shall within such period as aforesaid cause it to be vaccinated by some medical practitioner or public vaccinator,

“and the parent or guardian of every unprotected child may, whenever the Superintendent of Vaccination as hereinafter appointed shall deem it expedient, be served with a notice in the form prescribed in the first Schedule of this Act, requiring the parent or guardian, within fifteen days after the service of the same, to take such child, or cause such child to be taken, to a public vaccine station to be vaccinated, or within such period as aforesaid to cause it to be vaccinated by some medical practitioner or public vaccinator, and every such parent or guardian shall within the said period comply with the requisition,”

and any public vaccinator to whom such child, or to whom any child under the age of fourteen years, is brought for vaccination at such vaccine station, or who is requested to vaccinate such child elsewhere than at a public vaccine station, is hereby required, with all reasonable despatch, subject to the conditions hereinafter mentioned, to vaccinate such child.

Public vaccinator bound to vaccinate all children brought to him.

“Parent,” “guardian,” “unprotected child,” “public vaccinator,” and “medical practitioner” are defined in section 2.

4. “At an appointed hour on the same day in the following week after the operation shall have been performed, or on an earlier day if required, the parent or guardian shall cause the child to be inspected by the operator, or by any person deputed for that purpose by the Superintendent of Vaccination, that the result of the operation may be ascertained; and it shall be the duty of any public vaccinator who has vaccinated a child elsewhere than at a public vaccine station to visit the child at the time and for the purpose above-mentioned, whether he is requested to do so or not, unless the Superintendent of Vaccination has deputed some other person to act for such public vaccinator in this behalf.”

In the event of the vaccination being unsuccessful, such parent or guardian shall, if the public vaccinator or medical practitioner so direct, cause the child to be forthwith again vaccinated, and subsequently inspected as on the previous occasion.

No fee shall be charged by a public vaccinator for anything done by him under this section

5. If any public vaccinator or medical practitioner shall be of opinion that any child is not in a fit state to be vaccinated, he shall forthwith deliver to the parent or guardian of such child a certificate under his hand according to the form of Schedule (A) hereto annexed, or to the like effect, that the child is then in a state unfit for vaccination.

The said certificate shall remain in force for three months only, which shall remain in force for three months, but shall be renewable for successive periods of three months until a public vaccinator or medical practitioner shall deem the child to be in a fit state for vaccination, when the child shall, with all reasonable despatch, be vaccinated and a certificate of successful vaccination given in the form of Schedule (C) hereto annexed, according to the provisions of section seven, if warranted by the result.

"Public vaccinator," "medical practitioner," "parent," and "guardian" are defined in section 2.

6. If any public vaccinator or medical practitioner shall find that a child whom he has three times unsuccessfully vaccinated is insusceptible of successful vaccination, or that the child brought to him for vaccination has already been successfully inoculated or had the small-pox, he shall deliver to the parent or guardian of such child a certificate under his hand according to the form of Schedule (B) hereto annexed, or to the like effect, and if the Superintendent of Vaccination be satisfied that such child is insusceptible of successful vaccination, he shall endorse such certificate, and the parent or guardian shall thenceforth not be required to cause the child to be vaccinated.

*Superintendent of Vaccination*—See section 25, and note.

7. Every public vaccinator or medical practitioner, who shall have performed the operation of vaccination upon any child, and shall have ascertained that the same has been successful, shall deliver to the parent or guardian

Provision for giving certificates of successful vaccination.

of such child a certificate according to the form of Schedule (C) hereto annexed, or to the like effect, certifying that the said child has been successfully vaccinated.

8. No fee or remuneration shall be charged by any public vaccinator to the parent or guardian of any child for any such certificate as aforesaid, nor for any vaccination done by him in pursuance of this Act at a public vaccine station :

No fee to be charged for vaccination at a public vaccine station or for certificates.

But when a public vaccinator attends at the request of the parent or guardian elsewhere than at a public vaccine station for the purpose of vaccinating a child, he shall be paid a fee not exceeding eight annas, such fee to be devoted to the purposes in the next succeeding section mentioned

Proviso.

"Public vaccinator," "medical practitioner," "parent," and "guardian" are defined in section 2.

9. All such fees shall, in Calcutta, be paid in by the public vaccinator to the credit of the Corporation of the Town of Calcutta, and be by them appropriated for the purposes of this Act. In places outside Calcutta such fees shall be appropriated as the Lieutenant-Governor may from time to time direct.

Fees how to be appropriated.

In districts to which the provisions under heading F of Part III of the L. S. G. Act have been extended such fees will be credited to the District Fund. See section 52, clause (5).

10. The Superintendent of Vaccination as hereinafter appointed or any of his assistants may from time to time inspect the vaccination of any child, whether performed by a public vaccinator or medical practitioner, and may, if he think fit, direct that such child be forthwith again vaccinated.

Superintendent of Vaccination or his assistants may inspect vaccination of child.

By section 93 of the B. L. S. G. Act, the Inspector of Vaccination appointed by the District Board shall exercise the powers and perform the duties of the Superintendent of Vaccination under this Act.

#### VACCINATION OF UNPROTECTED PERSONS.

11. Every unprotected person may, whenever the said Superintendent of Vaccination shall deem it advisable, be served with a notice in the form in Schedule (D) hereto annexed requiring him within fifteen days after the service of the same

Unprotected persons to be vaccinated.

to submit himself to a public vaccinator or medical practitioner to be vaccinated, and every such person shall within the said period submit himself to a public vaccinator or medical practitioner for vaccination.

"Unprotected person," "public vaccinator," and "medical practitioner" are defined in section 2.

12. The provisions of sections three to ten (both inclusive) shall apply with the necessary alterations to the case of unprotected persons.

Former sections applicable.

13. The powers conferred by sections eleven and thirty upon the said Superintendent of Vaccination may, in the case of unprotected persons arriving in the Port of Calcutta, be exercised by the Health Officer of the said Port immediately upon their arrival.

Health Officer of Port may cause vaccination of unprotected persons on their arrival.

"If a vessel arrives in the said Port of Calcutta having on board any person suffering from the disease of small-pox, the said Health Officer may, if he deem it expedient in order to prevent the risk of the contagion of small-pox being conveyed into the Town or Suburbs of Calcutta, require any unprotected person on board such vessel to submit himself forthwith to be vaccinated, and every such person shall before leaving the vessel submit himself to the said Health Officer, or any person duly authorized to act in this behalf, for vaccination :

Provided that nothing herein contained shall apply to any vessel belonging to, or in the service of, Her Majesty or the Government of India, or to any vessel belonging to any foreign Prince or State."

Proviso.

"13A. Every person occupying any house, enclosure, vessel or other place within the limits of the Town or Port of Calcutta, or the Suburbs of Calcutta, or the Town of Howrah, shall allow the Superintendent of Vaccination, or a medical practitioner or public vaccinator duly authorized by him in this behalf, such access thereto as he may require for the purpose of ascertaining whether the inmates are protected or not, and as, having regard to the customs of the country, may be reasonable.

Occupier of house, &c., to allow access.

Whenever it is necessary to ascertain whether a woman is protected or not, the investigation shall be conducted by a female with strict regard to the habits and customs of the country."

PROCEDURE APPLICABLE TO THE TOWN OF CALCUTTA ONLY.

By section 25 the powers conferred upon the Corporation under this heading will elsewhere be exercised by the Magistrate of the District

14. For the purposes of this Act, the Corporation of the Town of Calcutta (hereinafter called the Corporation) shall, subject to the approval of the Lieutenant-Governor, appoint such stations for the performance of vaccination as they shall from time to time deem fit. Such stations shall be called "public vaccine stations."

The Corporation shall appoint such public vaccinators and vaccination establishments for carrying out the purposes of this Act as they shall from time to time deem fit.

The positions of the public vaccine stations fixed under the provisions of this section, and the days and hours of the public vaccinator's attendance at each station, shall be published from time to time in such manner as the Corporation may direct.

15. The Corporation may from time to time make such rules, consistent with this Act, as they may deem fit, for regulating the expenses of such vaccination establishments aforesaid, the payment of public vaccinators, and the realization and scale of fees under this Act.

16. The Health Officer for the Town of Calcutta shall be *ex-officio* Superintendent of Vaccination for the said Town. Such officer, subject to the orders of the Lieutenant-Governor, shall have a general control over all the proceedings of public vaccinators, and shall perform such duties in connection with public vaccination, in addition to those proscribed by this Act, as shall be required by the Lieutenant-Governor.

The Lieutenant-Governor may appoint, if necessary, one or more assistants to the Superintendent, and from time to time remove any such assistant.

17. The expenses of all vaccination establishments under this Act, and of the supply of lymph in Calcutta, shall, unless the Lieutenant-Governor otherwise direct, be defrayed by the Corporation.

*Registration.*

18. On the registration of the birth of any child under the provisions of Chapter X of "The Calcutta Municipal Consolidation Act, 1876," or of any other law for the time being in force, the Registrar shall deliver to the person giving information of such birth a printed notice in the form of Schedule (E) hereto annexed, or to the like effect, and such notice shall have attached thereto the several forms of certificates prescribed by this Act.

19. Every public vaccinator or medical practitioner, who gives to any parent or guardian a certificate in any of the forms of the said Schedules (A), (B), and (C) shall, within twenty-one days after giving the same, transmit a duplicate thereof to the Registrar of Births of the district where the birth of the child on whose account such certificate was given has been registered; or, if that be not known to him, or, if the child was born out of the Town of Calcutta, or, his birth has not been registered in the said Town, to the Registrar of the district within which the child was vaccinated or presented for vaccination.

"Public vaccinator," "medical practitioner," "parent," and "guardian" are defined in section 2.

20. The Registrar of Births shall keep a book in such form as may from time to time be prescribed by the Registrar to keep a Vaccination Notice and Certificate Book, which he shall enter minutes of the notices of vaccination given by him as herein required, and shall also register the duplicates of certificates transmitted to him as herein provided.

21. He shall also prepare and keep a duplicate of the Register of Births required to be kept by him under the provisions of "The Calcutta Municipal Consolidation Act, 1876," or of any other law for the time being in force, with such additional columns as shall from time to time be prescribed by the rules made under section 33, in which he shall record the date of every duplicate certificate in the form of the said Schedule (B) or Schedule (C) received by him concerning any child whose birth he has registered, and make an entry to the effect that the child has been vaccinated or is insusceptible of vaccination, as the case may be.

22. He shall also keep a Register of Postponed Vaccinations and also a Register of Postponed Vaccinations. in the form of Schedule (F) hereto annexed, in which he shall record the name

of every child concerning whom he receives a duplicate certificate in the form of the said Schedule (A), together with the date of such duplicate certificate, and of each such successive duplicate certificate, if he receives more than one, and shall show the number and year of the entry, if any, in the Register of Births in which such child's birth has been registered.

23. Every Registrar shall transmit on or before the fifteenth Transmission of re- of every month to the Superintendent of turnstoSuperintendent Vaccination a return, in such form as may from time to time be prescribed by the rules made under section thirty-three, of all cases in which duplicate certificates have not been duly received by him in pursuance of the provisions of this Act during the last preceding month.

24. The Lieutenant-Governor may direct that the duties imposed on the Registrar of Births under sections nineteen, twenty, twenty-one, twenty-two, and twenty-three, shall be performed by any other person appointed by the Lieutenant-Governor.

Lieutenant-Governor may direct any person to perform duties of Registrar.

#### PROCEDURE APPLICABLE OUTSIDE THE TOWN OF CALCUTTA.

25. In any municipality other than the Town of Calcutta, and in any local area to which this Act may hereafter be extended, the Magistrate of the district may exercise all or any of the powers by this Act conferred upon the Corporation;

and the Civil Surgeon of the district or such other officer as and of Superintendent the Lieutenant-Governor may from time to time appoint in that behalf shall exercise the powers and perform the duties by this Act assigned to the Superintendent of Vaccination.

By section 94 of the B L. S. G. Act, the District Board shall have the powers of the Magistrate of the district under this section. Section 94, however, only applies to districts to which the sections under heading F of the Act have been expressly extended By section 93 of the same Act, the Inspector of Vaccination appointed by the Board shall exercise the powers and perform the duties of the Superintendent of Vaccination under this Act.

#### PROSECUTIONS AND OFFENCES.

26. If the Superintendent of Vaccination shall notify in writing to a Magistrate that he has reason to believe from the statement of an informant or otherwise that any child under the age of fourteen years is an unprotected

Magistrate may make an order for the vaccination of any unprotected child under 14 years.

child, and that he has given notice to the parent or guardian of such child to procure its being vaccinated, and that the said notice has been disregarded, such Magistrate may summon such parent or guardian to appear with the child before him; and if the Magistrate shall find, after such enquiry as he shall deem necessary, that the child is an unprotected child, he may, whether the child has been produced or not, make an order directing such child to be vaccinated within a certain time. If the child is at any time produced before him, the Magistrate may, unless the child is certified under section five to be in a state unfit for vaccination, order it to be vaccinated forthwith in his presence, and in that case may punish such parent or guardian for any recusancy under this clause with fine which shall not exceed five rupees.

If at the expiration of the time appointed by the Magistrate, the child shall not have been vaccinated, or shall not be shown to be then unfit to be vaccinated, or to be insusceptible of vaccination, the person upon whom such order shall have been made shall, unless he can show some reasonable ground for his omission to carry the order into effect, be punished with fine which may extend to fifty rupees:

Provided that if the Magistrate shall be of opinion that the person is improperly brought before him, and shall refuse to make an order for the vaccination of the child, he may direct the said Superintendent to disclose the name of his informant, if any, and may order such informant to pay to such persons such sum of money as the Magistrate shall consider a fair compensation for expenses and loss of time in attending before him:

Provided also that nothing in this section shall be held to compel the production before a Magistrate of any female child above the age of eight years.

*Superintendent of Vaccination*—See note to preceding section.

*Magistrate*—By section 1, Act V of 1867 (B. C.) the word 'Magistrate' includes all persons exercising all or any of the powers of a Magistrate. "Unprotected child," "parent" and "guardian" are defined in section 2.

The amendment made in section 3 enlarges the scope of this section.

27. If any parent or guardian intentionally omits to produce a child whom he has been summoned to produce under the last preceding section, he shall be liable to fine which may extend to one hundred rupees.



and to a further fine of twenty-five rupees for every day during which the offence continues :

Provided that the aggregate amount of fine for such offence shall not exceed one thousand rupees.

The further fine referred to must be adjudicated on a subsequent conviction after the offence. An order by a Magistrate imposing a daily fine for such time as an offence may be continued is bad in law, as imposing a penalty for an offence which has not yet been committed.—*In re Sugur Dutt*, I. B. L. R., O. Cr., 41.

28. Whoever, in contravention of this Act,

(a) neglects without reasonable excuse to submit himself to a public vaccinator or medical practitioner to be vaccinated, or after vaccination to be inspected, or

Penalty for neglect to take child to be vaccinated, &c. b) neglects without reasonable excuse to take, or cause a child to be taken to be vaccinated, or after vaccination to be inspected, or

(c) neglects to fill up and sign and give to any person or to the parent or guardian of any child any certificate which such person, parent, or guardian is entitled to receive from him, or to transmit a duplicate of the same to the Registrar of Births, "or

(d) refuses without reasonable excuse to submit himself to be vaccinated when required so to do by the Health Officer exercising the powers conferred upon him by section thirteen,"

shall be punished for each such offence with fine which may extend to fifty rupees.

No prosecution under this section shall be instituted after the expiry of twelve months from the date on which the offence has been committed.

"Public vaccinator," "medical practitioner," "parent," and "guardian" are defined in section 2.

29. Whoever wilfully signs or makes, or procures the signing

Penalty for making or signing false certificate. or making of, a false certificate or duplicate certificate under this Act, shall be punished with imprisonment of either description, within the meaning of the Indian Penal Code, for a term which may extend to six months, or with fine which may extend to one hundred rupees, or with both.

"29A. Whoever voluntarily obstructs any public vaccinator in the discharge of the duties assigned to him as such shall be punished for each such offence with fine which may extend to fifty rupees.

Penalty for obstructing public vaccinator in the discharge of his duties.

"29B. Any public vaccinator who vexatiously and unnecessarily enters any house, enclosure, vessel or other place, on pretence of ascertaining whether the inmates, or any of them, are protected or not, shall, for every such offence, be punished with fine which may extend to fifty rupees."

30. All offences under this Act shall be cognizable by a Magistrate, subject to the provisions of any law for the time being in force for the trial of offences; but no complaint of any such offences shall be entertained unless the prosecution be instituted by order of, or under authority from, the Lieutenant-Governor or the Superintendent of Vaccination.

In districts to which the provisions under heading F of the L. S. G. Act have been extended for "Superintendent of Vaccination" read "Inspector of Vaccination"—See section 93 of the L. S. G. Act

By section 1, Act V of 1867 (B. C.) the word "Magistrate" includes all persons exercising all or any of the powers of a Magistrate.

31. In any prosecution for neglect to procure the vaccination of a child, it shall not be necessary in support thereof to prove that the defendant had received notice from the Registrar or any other officer of the requirements of the law in this respect; but if the defendant produce any such certificate as hereinbefore described, or the duplicate of the Register of Births or the Register of Postponed Vaccinations kept by the Registrar as hereinbefore provided, in which such certificate shall be duly entered, the same shall be a sufficient defence for him, except in regard to the certificate according to the form of the said Schedule (A), when the time specified therein for the postponement of the vaccination shall have expired before the time when the information shall have been laid.

#### MISCELLANEOUS.

32. It shall be the duty of the Superintendent of Vaccination to show in an Annual Return the number of children successfully vaccinated, the number whose vaccination has been postponed, and the number certified to be insusceptible of successful vaccination during the year; and generally to fill up any forms that may be prescribed from time to time by the Lieutenant-Governor or the Corporation.

*Superintendent of Vaccination and Corporation*—See section 25 and note.

33. The Lieutenant-Governor may from time to time make rules or issue orders consistent with this Act—

- (a) determining the qualifications to be required of public vaccinators ;
- (b) regulating the scale of fees to be paid outside the Town of Calcutta ;
- (c) regulating the gratuitous vaccination of such females as are by the custom of the country unable to attend at the public vaccine stations and are too poor to pay fees ;
- (d) providing for the supply of lymph ;
- (e) regulating the books and forms to be kept by the Public Vaccinators or by Registrars, and also such forms as shall be required for the signature of medical practitioners under the provisions of this Act ; and generally
- (f) for the guidance of public vaccinators and others in all matters connected with the working of this Act.

All such rules or orders shall be published in the *Calcutta Gazette*.

# FIRST SCHEDULE.

(See Section 3.)

To

[Here insert the name of the parent or guardian.]

Take notice that you are hereby required under the provisions of the Bengal Vaccination Act, 1880, to take, or cause [here insert the name of the child] the child of [here insert the name of the father] to be taken to a public vaccine station for vaccination, or to cause it to be vaccinated by some medical practitioner or public vaccinator within 15 days from the service of this notice, and that in default of so doing you will be liable to a fine of fifty rupees.

The public vaccine station nearest your house is at .  
The days and hours for vaccination at that station are as follows :—

[Here insert the days and hours when the public vaccinator is in attendance.]

On the said [here insert the name of the child] being brought before a public vaccinator at the said station within the said hours on any of the said days, or at any other public vaccine station in the town on the days and within the hours prescribed

for public vaccination at such station, the said [here insert the name of the child] will be vaccinated free of charge.

If you wish the said [here insert the name of the child] to be vaccinated at your own house, the public vaccinator will attend there upon payment of a fee of .

Dated the                      of                      18 .

*Superintendent of Vaccination.*

### SCHEDULE A.

*(See Section 5.)*

I, the undersigned, hereby certify that, in my opinion,  
the child of                      , resident at  
is not now in a fit and proper state to be vaccinated, and I  
do hereby recommend that the vaccination be postponed for the  
period of three months from this date. Dated this                      day  
of                      18 .

*(Signature of Medical Practitioner or Public Vaccinator.)*

### SCHEDULE B.

*(See Section 6.)*

I, the undersigned, hereby certify that I have three times unsuccessful-  
ly vaccinated                      , the child of  
residing at                      (or that the child has already had  
small-pox, *as the case may be*), and I am of opinion that the  
said child is insusceptible of successful vaccination. Dated this  
day of                      18 .

*(Signature of Medical Practitioner or Public Vaccinator.)*

*(Endorsement by Superintendent of Vaccination.)*

### SCHEDULE C.

*(See Section 7.)*

I, the undersigned, hereby certify that                      , the child of  
                    , age                      , resident at                      , has been  
successfully vaccinated by me. Dated this                      day of  
18 .

*(Signature of Medical Practitioner or Public Vaccinator.)*

## SCHEDULE D.

(See Section 11.)

To

Take notice that you are hereby required under the provisions of the Bengal Vaccination Act, 1880, to submit yourself to a public vaccinator or medical practitioner within fifteen days from the service of this notice for vaccination, and that in default of so doing you will be liable to a fine which may amount to fifty rupees.

The public vaccine station nearest your house is at  
The days and hours for vaccination at that station are as follows.—

*(Here insert the days and hours when the public vaccinator is in attendance.)*

On your attending before a public vaccinator at the said station within the said hours on any of the said days, or at any other public vaccine station in the town on the days and within the hours prescribed for public vaccination at such station, you will be vaccinated free of charge.

If you wish to be vaccinated at your own house, the public vaccinator will attend there upon payment of a fee of .

Dated the                      of                      18 .

*Superintendent of Vaccination,  
or Civil Surgeon, as the case may be.*

## SCHEDULE E.

(See Section 18.)

To

*(Here insert the name of the parent, guardian, or other person who gives information of the child's birth.)*

Take notice that the child of *(here enter the mother's name)* whose birth has this day been registered, must be vaccinated, under the provisions of the Bengal Vaccination Act, 1880, within one year from the date of its birth, under penalty.

The public vaccine station nearest to the house in which the child was born is at No.                      The days and hours for vaccination at that station are as follows :—

*(Here insert the days and the hours when the public vaccinator is in attendance.)*

On your taking, or causing the child to be taken, to the public vaccinator at the said station within the said hours on any of the said days, or at any other public vaccine station in the city on

the days and within the hours prescribed for public vaccination at such station, it will be vaccinated free of charge.

If you wish to have the child vaccinated at your own house, the public vaccinator will attend there upon payment of a fee of

You should be careful to have one of the annexed forms of certificates filled in by the public vaccinator, or if you employ a private medical practitioner to vaccinate the child, by such medical practitioner, and to keep the same in your possession. Any such certificate will be granted to you by a public vaccinator free of charge.

Dated the                      of                      18 .

*Registrar of Birth.*

### SCHEDULE F.

(See Section 22 )

*Register of postponed vaccinations for the district of .*

Consecutive number.	NAME OF CHILD.	BIRTH.		Date of certificate of postponement.	Signature of Registrar.
		Year.	Number of entry in register.		
1	Ram Chunder Dass.	1878	12	1878 May .   10	H. O.

### NOTIFICATION.

*The 16th May 1884.*—In modification of the Rules published under the notification dated the 30th September 1881, at page 902, Part I of the *Calcutta Gazette* of the 5th October 1881, the following Rules are passed by the Lieutenant-Governor under Section 33, Act V (B. C.) of 1880, the Bengal Vaccination Act, for all places to which the Act has been, or may be hereafter extended other than the Town, Port, and Suburbs of Calcutta, for which separate Rules have been made :—

- (a) *Rules for determining the qualifications to be required of public vaccinators.*

No person shall be recognized as a public vaccinator who does not possess a certificate of competency signed by a Superin-

tendent of Vaccination, a Civil Surgeon, other principal Civil Medical Officer of a district, or principal Military Medical Officer of a cantonment.

No such certificate will be granted by such Superintendent of Vaccination or other officer aforesaid, unless he has satisfied himself, by oral and practical examination, that the candidate possesses sufficient knowledge and skill.

Every person applying to be examined must submit evidence that he has been employed in vaccinating, in the capacity of an apprentice or assistant, for a period of at least six months.

The object of the examination is to test the candidate's—

- (1) Knowledge of the phenomena of the vaccine disease ;
- (2) Knowledge of the methods of performing vaccination ;
- (3) Knowledge of the methods of collecting and storing lymph ;
- (4) Power of recognizing a good vesicle and cicatrix ;
- (5) General acquaintance with the phenomena of small-pox ;
- (6) Knowledge of the provisions of Act V of 1880, in as far as they relate to the duties of a vaccinator ;
- (7) Acquaintance with the forms and certificates required to be kept and granted under Act V of 1880.

The certificate will be written on parchment in accordance with the following form :—

I hereby certify that I have examined \_\_\_\_\_ and find him qualified for the office of public vaccinator.

*Dated*      *Superintendent of Vaccination, or civil Surgeon,*  
                  *or principal Civil Medical Officer of the district of*  
                  *or principal Military Medical Officer of a cantonment.*  
                  *(b) Rule for regulating the scale of fees.*

Persons desirous of having vaccination performed in their own houses shall apply for the services of a vaccinator to one of the head vaccinators, or, where there is no head vaccinator, to the Civil Surgeon or other principal Civil or Military Medical Officer or any person appointed by him with the consent of the Magistrate or of the Officer Commanding in a cantonment in this behalf, and shall pay a fee of four annas for each vaccination, for which they will obtain a printed receipt. No fees are payable on account of any vaccination performed at a public vaccine station.

- (c) Rule for regulating the gratuitous vaccination of such females as are by the custom of the country unable to attend at the public vaccine stations and are too poor to pay fees for house vaccination.*

If the head vaccinator, or where there is no head vaccinator, the vaccinator considers that any female, who, from the custom





*Statement No. I showing particulars of vaccination in the*

[illegible]

*N. B.*—*Column 7*—Where the same vaccinators are employed in more than one district, the average should be given for the circle.  
*Columns 13 and 14*—"Re-vaccination" should include the vaccination of all persons who bear marks of previous vaccination or of small-pox.

Number of villages visited by Superintendent of Vaccination, or Civil Surgeon, or other principal Civil Medical Officer of the district ; number of persons found to have been vaccinated ; number successfully vaccinated

Number of villages visited by Deputy Superintendents  
 number of persons found to have been vaccinated  
 number successfully vaccinated

Number of villages visited by inspecting vaccinator  
 number of persons found to have been vaccinated  
 number successfully vaccinated

*Note.*—In instances certificates of postponement were granted, and in instances certificates of insusceptibility of successful vaccination.

(3) The book which a Registrar of Births is required to keep under section 20, for entering minutes of notices issued by him shall be a counterfoil to Schedule E appended to the Act, and shall contain the following headings :—

1. Name of person to whom notice has been issued.
2. Name of child.
3. Date of birth.
4. Date of notice
5. Number of entry in birth register.
6. Signature of Registrar.

(4) The register of duplicates of certificates which a Registrar has to keep under section 20, and the further particulars required by section 21, shall be in the following form :—

*Register of Vaccination.*

Serial number.	Name of child.	Date of birth.	Number of entry in register of birth.	Date of notice (Schedule E).	Date of certificate of successful vaccination (Schedule C).	Date of certificate of insusceptibility (Schedule B).	Signature of Registrar.

(5) To the register of births already in use in police stations, a column shall be added, showing the "Number in Vaccination Register."

(6) The monthly return of cases in which notice of vaccination has been sent, but certificate has not been received, which Registrars are required to transmit to the Civil Surgeon or other principal Civil or Military Medical Officer of the district or cantonment under section 23, shall be in the following form :—

*Return of cases in which notice of vaccination has been sent, but certificate has not been received for the month of* .

Name of child.	Name of parent or guardian.	Residence.	Date of issue of notice.

*A case once included in this return need not be entered in any future return.*

The following two forms shall also be kept at each vaccine station :—

(7) *Register of Receipts under Act V (B. C.) of 1880 at the Municipality of*  
*Vaccine Depot in the* } *District of*

Number.	Date.	From whom received	Amount received.	Initials of vaccinator.	Child's name and number on vaccination register (to be filled in when the entry in the vaccination register is made).

In the above register should be entered all sums received from persons who have availed themselves of the services of a vaccinator at places other than the vaccine stations, and have paid the prescribed fees. The amount realized at each depot should be deposited at the office of the Civil Surgeon or other principal Civil or Military Medical Officer every Saturday, or more frequently if that officer so orders, and the said officer should remit

to the treasury the amount so deposited once a week. If the amount realized at a dépôt at any time exceeds Rs. 25, it should be remitted at once.

(8) *Register of Expenditure under Act V (B. C.) of 1880 at the Public Vaccine Dépôt for the month of*

Number.	Date.	On what account expended	Amount.	Initials of vaccinator.
				.

(9) The forms of certificates of postponed vaccination (section 5), unsuccessful vaccination (section 6), and successful vaccination (section 7), are given in Schedules A, B, and C respectively, appended to the Act.

(10) The forms of notices under sections 11 and 18 are given in Schedules D and E.

(11) The form of register of postponed vaccinations under section 22 is given in Schedule F.

(f) *Rules for the guidance of public vaccinators and others in all matters connected with the working of the Act.*

A.—Instructions for the guidance of public vaccinators under the provisions of Act V (B. C.) of 1880 :—

1. According to the provisions of this Act, the parent or guardian of every child born in any place in which the Act is in force shall, within one year after the birth of such child ; and the parent or guardian of every unprotected child under the age of 14 years brought to reside, whether temporarily or permanently, in any such place, within six months after such child's arrival at such place, or if the child be at the time of its arrival less than one year old, within one year and three months after its birth, and the parent or guardian of every unprotected child living in any such place at the date of this Act coming into force, and whose age at such date exceeds one year, but does not exceed fourteen years, shall, within six months from the said date, take it, or cause it to be taken to a public vaccine station to be vaccinated, or shall, within such time as aforesaid, cause it to be vaccinated by some public vaccinator.

2. Whenever a public vaccinator finds that a child, who

Action to be taken by public vaccinators when they find unprotected children who ought to have been vaccinated according to the provisions of the Vaccination Act.

ought to have been vaccinated according to the above provisions, remains unprotected, he shall ask the parent or guardian of such child to have it forthwith vaccinated, and explain to him the liabilities he will incur if he declines to do so ; and if the parent or guardian of such unprotected child does not comply with the

vaccinator's requisition, the latter shall at once bring the matter to the notice of the Civil Surgeon or other principal Civil or Military Medical Officer of the district or cantonment in order that legal proceedings may be taken against the parent or guardian of such unprotected child.

3. Public vaccinators must be very careful to supply the Civil

Vaccinators must be very careful to supply Civil Surgeon, &c., with correct information.

Surgeon or other principal Civil or Military Medical Officer of the district or cantonment with correct information, for, if they fail to prove their statements

before the Court, they will be liable to pay any damages which the Magistrate may order for the necessary trouble of the person whom they have caused to be prosecuted.

4. Whenever a public vaccinator finds that a person whose

Action to be taken by vaccinators with reference to unprotected persons.

age exceeds 14 years is still unprotected, he shall ask such unprotected person to get himself forthwith vaccinated ; and in the event of the latter declining to do so,

the public vaccinator shall bring the circumstance to the notice of the Civil Surgeon or other principal Civil or Military Medical Officer, in order that the said unprotected person may be served with a notice in form of Schedule (D) annexed to the Act, requiring him, within fifteen days after the service of the same, to submit himself to a public vaccinator to be vaccinated.

5. Vaccinators should endeavour to ascertain—

(a) Whether children born in any place in which the Act is in force have had their births registered at the police station of the section, and been served with notices. Information ought at once to be given to the Registrar in cases in which this duty has been neglected.

(b) Whether any child under 14 years of age, not protected by vaccination, inoculation, or small-pox, has been brought to reside in any place in which the Act is in force. In such case also information ought to be given at the police station in order that a notice may be served.

6. When, in order to facilitate the vaccination of unprotected

Public vaccine stations opened at different places to facilitate vaccination of all unprotected persons.

vaccine stations have

Vaccinators are bound to vaccinate all unprotected persons that resort to public vaccine stations free of all charges.

persons, public vaccine stations have been opened in the different parts of any municipality or other place in which the Act is in force, and the days and hours of public vaccinator's attendance at these public vaccine stations have been fixed and published as required by section 14, the public vaccinators attached to each of the vaccine stations must attend at them on the specified days and within the specified hours, and vaccinate all unprotected persons free of all charges.

7. The name, age, caste, &c., of all persons vaccinated at

Vaccinators to enter name in the vaccine register.

public vaccine stations shall be carefully entered in the vaccine register provided for the purpose.

8. Vaccinators shall instruct the parent or guardian of every

Inspection of vaccinated children

vaccinated child to bring it back to the station on the fourth or fifth day after the operation, that they may see whether all

the points of vaccination have taken. If there be a failure of one or more points, they should be careful to repeat vaccination at those points, and enter the fact of their having done so in the remark column of the vaccine register. The vaccinators shall again direct the parent or guardian to bring the child once more on the seventh or eighth day, that they may ascertain and enter in their register the final result of the operation.

9. If the operation proves successful, the vaccinators must

Vaccinators to grant certificate of successful vaccination.

deliver to the parent or guardian a certificate to that effect in the form of Schedule (C). If it proves unsuccessful, the vaccinators must forthwith again vaccinate the child, and issue instructions for its inspection as before.

When unsuccessful, vaccination to be repeated.

10. If a vaccinator finds that a child whom he has three

Vaccinators to grant certificate of insusceptible vaccination.

times unsuccessfully vaccinated is insusceptible of successful vaccination, he should deliver to the parent or guardian of such child a certificate in the form of Schedule (B).

11. If a vaccinator shall be of opinion that a child is not in

Certificate of postponed vaccination to be given by vaccinators.

a fit state to be vaccinated, he shall forthwith deliver to the parent or guardian of such child a certificate in the form of Schedule (A).

12. This certificate shall remain in force for three months, but shall be renewable for successive periods of three months until the vaccinator shall deem the child to be in a fit state for vaccination, when the child shall, with all reasonable despatch, be vaccinated, and a certificate of successful vaccination given in the form of Schedule (C) if warranted by the result.

13. A public vaccinator shall on no account charge any person for granting certificates of successful vaccination, of postponed vaccination, or of insusceptibility to vaccination, whether No fee to be charged for granting certificate. the same be granted at the public vaccine station or elsewhere.

14. Every public vaccinator who gives to any parent or guardian a certificate in any of the forms of Schedules (A), (B), and (C) shall, Duplicates of certificates to be sent to Registrar within 21 days. transmit a duplicate thereof to the Registrar of Births of the police section of the municipality where the birth of the child on whose account such certificate was given has been registered, or in which the child, if its birth has not been registered, resides.

15. When a public vaccinator attends at the request of the parent or guardian elsewhere than at a Vaccination at private houses. public vaccine station for the purpose of vaccinating a child, he shall charge a fee

Fees to be charged. of four annas for every such vaccination. He is to inspect the child on the fourth and seventh or eighth day, and grant certificates as in cases of vaccination in the stations. No fee is to be charged for inspection and for granting certificates.

16. Public vaccinators are to grant printed receipts for amounts paid to them as fees. These Receipts for fees to be given to the parent or guardian, and the amount collected should be deposited at the office of the Civil Surgeon, &c., every week. amounts are to be deposited at the office of the Civil Surgeon or other principal Civil or Military Medical Officer every Saturday or oftener if that officer so orders. The vaccinators are warned not to misappropriate any portion of the fees to themselves, for if they do so, they are

Punishment for misappropriation of fees. liable not only to be dismissed from the department, but also to be criminally prosecuted.

17. To ensure successful vaccination, the following cardinal points are to be remembered by every vaccinator—*viz.*, good virus, a clean lancet, Selection of lymph. and the healthy constitution of the person to be vaccinated. Vaccinators should use none but the best virus; they should remember that vaccination with bad virus is worse than no

vaccination; for it not only does not protect the person from attack of small-pox, but brings discredit on both the vaccinator and vaccination. The vaccinators should

Good virus should always be used. not only use good virus, but take it

from those persons only who are free from constitutional diseases, especially syphilis. Lymph should never be taken from a child who has an eruption on his skin, lumps about the anus or genital organs, bad teeth, or a sore-throat or cold. In fact, none but perfectly healthy children should be used as subjects for conveyance of lymph. A clean lancet should invariably be used; when a foul lancet is used, it produces an amount of irritation in the vesicles which

Healthy persons are only to be vaccinated in ordinary times.

Exception in times of epidemic.

renders success doubtful In ordinary times persons in good health are only to be vaccinated, but in times of epidemic every unprotected person, whether in sound health or otherwise, should be

vaccinated. There is no fear in vaccinating pregnant women.

18. In cases of good and successful vaccination, the following phenomena are observed in the places where the virus is inserted:—No change takes place until the third day, when the points of insertion of the virus appear like red spots or musquito bites. On the fourth day these spots look like little pimples. On the fifth and sixth days the pimples enlarge into vesicles and contain clear lymph. On the seventh day the vesicles are fully developed. On the eighth day areolæ form around the vesicles. There is sympathetic fever from this day. On the ninth day the contents of the vesicles become perfectly yellow, and the surrounding inflammation becomes more intense. After the tenth day a crust gradually forms, brownish-black in colour and of considerable thickness, and should fall off from the 18th to the 20th day, or two days earlier in the hot season. It should leave a well-depressed cicatrix, with marked edges and floor lined and pitted.

The period at which the lymph is to be taken.

19. Lymph should be taken on the sixth and seventh days in the winter season, and on the fifth and sixth days in the hot and rainy seasons.

20. In taking lymph the vesicles are to be punctured from the top, and not from the side. If the vesicles be punctured at the side, the inner septa of the vesicles would prevent

the flowing of the lymph into the seat of puncture. The upper surface should not be scraped off. It should only be punctured, and if the lancet be placed flatly an abundance of lymph will flow on it.



The lymph thus taken on the point of the lancet is to be inserted in at least four different places, two on each arm, one above, and the other below the insertion of the deltoid muscles from an inch to an inch and-a-half apart from each other. The virus is to be inserted below the scurf or upper skin, but not deep enough to draw blood. Three such punctures are to be made in each place thus.

21. The vaccinators must be kind and courteous towards the people that come to the public vaccine stations to have their children vaccinated. The people from their ignorance of the vaccine disease will ask many useless and tedious questions of the vaccinators, but the latter should not get annoyed at this. They should particularly explain everything which the parent or guardian of vaccinated children may want to know. While vaccinating at private houses, they should be equally kind and courteous in their manners, and although the law does not prohibit their taking any reward or present from persons able and willing to pay, they should make no demands.

*B.—Instructions to Registrar:—*

1. The Bengal Vaccination Act, 1880 ( Act V of 1880 ), requires of Registrars of Births the following duties connected with compulsory vaccination, in addition to those duties relating to the registration of births and deaths which the law imposes upon them:—

2. On the registration of the birth of a child, the Registrar shall deliver to the person giving information of such birth a printed notice in the form of Schedule E appended to the Act.

3. The Act further requires the parents and guardians of children under 14 years of age not born, but brought to reside, whether temporarily or permanently, in any place in which the Act is in force, to have them vaccinated within six months of arrival, or if at the time of arrival they are below one year of age, within 15 months of birth. On such cases coming to the knowledge of Registrars, a notice should be served in Schedule E, altered according to circumstances. Such cases should be included in the register of vaccination, column 4 being left blank.

4. These notices will be issued to Registrars in the form of a book, each notice having a counterfoil which will, when filled in, constitute the minutes of the notices required by section 20 of the Act.

5. Vaccinators are directed by the Act when a person or child is successfully vaccinated, to transmit to the Registrar a duplicate copy of the certificate ( Schedule C ), the original of which has been handed to the parent, or guardian, or person. Similarly,

when the vaccinator considers it advisable to postpone vaccination on account of ill-health or unfitness from any other cause, a certificate to that effect (Schedule A) is given to the parent, or guardian, or person, and a duplicate thereof sent to the Registrar; and when a person or child is found insusceptible of vaccination, a certificate (Schedule B) is given, and a duplicate sent to the Registrar. These duplicate certificates (Schedules A, B, and C) of postponed unsuccessful and successful vaccination should be filed in separate bundles, and the information conveyed by them entered in the proper columns of the registers.

6. A register of vaccination shall be kept in the following form, of which columns 1, 2, 3, 4, and 5 will be filled up on issue of the notice (Schedule E), and the remaining columns on receipt of the duplicate certificate mentioned in the last paragraph :—

*Register of vaccination for*

Serial No.	Name of child.	Date of birth.	No. of entry in register of birth	Date of notice—Schedule E.	Date of certificate of successful vaccination—Schedule C.	Date of certificate of insusceptibility—Schedule B.	Signature of Registrar.
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7. An additional column will be in future added to the ordinary "Register of Births" in which an entry will be made referring to the "Number in the Vaccination Register." Thus these two registers—the "Register of Births" and the "Vaccination Register"—will contain references to each other, and no difficulty can be experienced in ascertaining whether a certificate has been received regarding the vaccination of any child whose birth has been registered.

8. When a certificate has been received of the postponement of vaccination (Schedule A), an entry should be made in the special "Register of postponed vaccination" (Schedule F) prescribed by the Act. Care should be taken that a child, regarding whom a certificate of this kind is received, is eventually vaccinated, and unless a renewed certificate of postponement has been received, an entry should be made of the name in the return mentioned in the next paragraph.

9. As soon after the first of every month as possible, a return will be forwarded to the Civil Surgeon or other principal

Civil or Military Medical Officer in the following form, showing the cases in which notice has been given or certificate of postponement has been received, and the period mentioned in the notice or certificate of postponement has expired without receipt of a certificate of successful vaccination or insusceptibility (Schedule B or C). A case once returned in this form need not be entered again, except in the instance of a fresh postponement :—

*Return of cases in which notice of vaccination has been served, but certificate has not been received for the month of*

Name of child.	Name of parent or guardian.	Residence.	Date of issue of notice.
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10. It is obviously desirable, for the purpose of ensuring that every child born in any place in which the Act is in force shall be vaccinated, that every endeavour should be made to render the registration of births as perfect as possible. Every endeavour should therefore be made to ascertain and cause the registration of every birth occurring in any place in which the Act is in force.

E. N. BAKER,

*Offg. Secy. to the Govt. of Bengal.*

## ACT No. I OF 1871.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor-General on the  
13th January 1871.)*

*An Act to consolidate and amend the law relating to Trespasses  
by Cattle.*

WHEREAS it is expedient to consolidate and amend the law relating to trespasses by cattle ; It is hereby enacted as follows :—

Preamble.

### CHAPTER I.

*The powers of the Magistrate of the District under this Chapter,  
have been transferred to the District Board.*

### PRELIMINARY.

Short title.

1. This Act may be called ‘ The Cattle-Trespass Act, 1871.’

It extends to the whole of British India except the Presidency

Local extent.

Towns and such districts or tracts of country as the Local Government, with the sanction of the Governor-General in Council, may exclude from its operation.

Commencement of Act.

And it shall come into force on the passing thereof.

Repeal of Acts.

2. The Acts mentioned in the schedule hereto annexed are repealed.

References to repealed Acts.

References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act.

All pounds established, pound-keepers appointed, and villages determined, under Act No. III of 1857 (*relating to trespasses by cattle*), shall be deemed to be, respectively, established, appointed, and determined under this Act.

Interpretation-clause.

3. In this Act :—

‘Officer of Police’ includes also Village Watchman, and

‘Cattle’ includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids.

## CHAPTER II.

*The powers of the Magistrate of the District under this Chapter, have been transferred to the District Board.*

### POUNDS AND POUND-KEEPERS.

4. Pounds shall be established at such places as the Magistrate of the District, subject to the general

Establishment of pounds.

control of the Local Government, from time to time directs.

The village by which every pound is to be used shall be determined by the Magistrate of the District.

5. The pounds shall be under the control of the Magistrate of the District ; and he shall fix, and

Control of pounds.  
Rates of charge for feeding impounded cattle.

may from time to time alter, the rates of charge for feeding and watering impounded cattle.

By section 61 of the L. S. G. Act every District Board shall exercise such powers in regard to pounds as may be made over to it by order notified under Act XVIII of 1883. By section 111 of the same Act, similar powers may be exercised by Union Committees.

Appointment of pound-keepers.

6. The Magistrate of the District shall also appoint for each pound a pound-keeper :

Provided that in the Presidency of Fort St. George, the heads of villages, and, in the Presidency of Bombay, the Police pátíls, or (where there are no police pátíls), the heads of villages, shall be *ex-officio* the keepers of village-pounds.

*Ex-officio* pound-keepers in Madras and Bombay.

Every pound-keeper appointed by the Magistrate of the District may be suspended or removed by such Magistrate.

Suspension or removal of pound-keepers.

Any pound-keeper may hold simultaneously any other office under Government.

Pound-keepers may hold other offices.

Every pound-keeper shall be deemed a public servant within the meaning of the Indian Penal Code.

Pound-keepers to be public servants.

#### DUTIES OF POUND-KEEPERS

7. Every pound-keeper shall keep such registers and furnish such returns as the Local Government from time to time directs.

To keep registers and furnish returns.

8. When cattle are brought to a pound, the pound-keeper shall enter in his register—

To register seizures

- (a) the number and description of the animals,
- (b) the day and hour on and at which they were so brought,
- (c) the name and residence of the seizer, and
- (d) the name and residence of the owner, if known,

and shall give the seizer or his agent a copy of the entry.

9. The pound-keeper shall take charge of, feed and water the cattle until they are disposed of as hereinafter directed.

To take charge of and feed cattle.

### CHAPTER III.

*The powers of the Magistrate of the District under this Chapter, have been transferred to the District Board.*

#### IMPOUNDING CATTLE.

10. The cultivator or occupier of any land, or any person who had advanced cash for the cultivation of the crop or produce on any land,

Cattle damaging land.

or the vendee or mortgagee of such crop or produce, or any part thereof,

may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto or to any crop or produce thereon and take them or cause them to be taken without unnecessary delay to the pound established for the village in which the land is situate.

All officers of police shall, when required, aid in preventing  
 Police to aid seizures. (a) resistance to such seizures, and (b) rescues from persons making such seizures.

11. Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like, and officers of police may seize, or cause to be seized, any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments and the like, or the sides or slopes of such roads, canals, drainage-works or embankments, or found straying thereon, and shall take them without unnecessary delay to the nearest pound.

12. For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine according to the following scale :—

Elephant	.	.	.	two rupees.
Camel or buffalo	.	.	.	eight annas.
Horse, mare, gelding, pony, colt, filly,				
mule, bull, bullock, cow or heifer	.	.	.	four „
Calf, ass, or pig	.	.	.	two „
Ram, ewe, sheep, lamb, goat or kid	.	.	.	one anna.

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Government from time to time directs.

A list of the fines and of the rates of charge for feeding and watering cattle shall be stuck up in a conspicuous place on or near to every pound.

#### CHAPTER IV.

*The powers of the Magistrate of the District under this Chapter, have not been transferred to the District Board.*

##### DELIVERY OR SALE OF CATTLE.

13. If the owner of impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

The owner or his agent on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

14. If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to the officer in charge of the nearest police-station, or

to such other officer as the Magistrate of the District appoints in this behalf.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

- (a) the number and description of the cattle,
- (b) the place where they were seized,
- (c) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time, and subject to such conditions as the Magistrate of the District by general or special order from time to time directs :

Provided that if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal and that the owner is about to make a complaint under section twenty, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

16. If the owner or his agent appear, and refuse or omit to pay or (in the case mentioned in section fifteen) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer, at such place and time, and subject to such conditions as are referred to in section fourteen.

The fines leviable and the expenses of feeding and watering together with the expenses of scale, if any, shall be deducted from the proceeds of the sale.

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account, showing—

- (a) the number of cattle seized,
- (b) the time during which they have been impounded,
- (c) the amount of fines and charges incurred,
- (d) the number of cattle sold,

- (e) the proceeds of sale, and  
 (f) the manner in which those proceeds have been disposed of.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him

Receipt. according to such account.

Disposal of fines, ex- 17. The officer by whom the sale was  
 penses, and surplus pro- made shall send to the Magistrate of the  
 ceeds of sale. district the fines so deducted.

The charges for feeding and watering deducted under section sixteen shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section thirteen.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and, if no claim thereto be preferred and established within that period, shall, at its expiry, dispose of them as hereinafter provided.

18. Out of the sums received on account of fines and the Application of fines unclaimed proceeds of the sale of cattle, and unclaimed proceeds shall be paid—  
 of sales.

(a) the salaries allowed to pound-keepers under the orders of the Local Government ;

(b) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act ;

and the surplus (if any) shall be applied, under orders of the Local Government, to the construction and repair of roads and bridges, and to other purposes of public utility.

By section 56 of the L. S. G. Act all sums accruing within a union under this Act shall be credited to the Union Fund. By section 52, clause (3), such proceeds as are not credited to any Union Fund will be credited to the District Fund.

19. No officer of police, or other officer or pound-keeper appointed under the provisions herein contained, shall, directly or indirectly, purchase any cattle at a sale under this Act.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this chapter, unless such release or delivery is ordered by a Magistrate or Civil Court.

Pound-keepers when not to release impounded cattle.

A breach of the provisions of the first clause of this section is punishable under section 169 of the Penal Code.



## CHAPTER V.

## COMPLAINTS OF ILLEGAL SEIZURES.

20. Any person whose cattle have been seized and detained under this Act may, at any time within ten days from the date of the seizure, make a complaint to the Magistrate of the District, or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District.

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an enquiry into the case.

22. If the seizure be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure and detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure, together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle;

and if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure.

23. The compensation, fines and expenses mentioned in section twenty-two may be recovered as if they were fines imposed by the Magistrate.

## CHAPTER VI.

## PENALTIES.

24. Whoever forcibly opposes the seizure of cattle liable to be seized under this Act, and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act,

shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

By section II. clause (13) of the General Clauses Act, India Act I of 1868 "Magistrate" includes all persons exercising all or any of the powers of a Magistrate under the Criminal Procedure Code. By clause (18) of the same section "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code.

25. Any fine imposed for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

Mere neglect on the part of an owner of cattle to prevent them from straying upon land does not amount to mischief within the meaning of section 425 of the Penal Code. Before the owner can be convicted, it must be proved that he actually caused the cattle to enter, knowing that by so doing he was likely to cause damage.—*Forbes v. Girish Chandra Bhattacharjee*, 6 B. L. R., Appendix, 3.

26. Any owner or keeper of pigs who, through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road, by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees.

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section nineteen, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Such fines may be recovered by deductions from the pound-keeper's salary.

28. All fines recovered under section twenty-five, section twenty-six or section twenty-seven may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

## CHAPTER VII.

## SUITS FOR COMPENSATION.

29. Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle, from suing for compensation in any competent Court.
30. Any compensation paid to such person under this Act by order of the convicting Magistrate, shall be set-off and deducted from any sum claimed by or awarded to him as compensation in such suit.

## SCHEDULE.

(See Section 2.)

Number and year	Title of Act.
III of 1857	An Act relating to trespasses by cattle.
V of 1860	An Act to amend Act III of 1857 (relating to trespasses by cattle).
XXII of 1861	An Act to amend Act III of 1857 (relating to trespasses by cattle).

## ACT No. XVIII OF 1883.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 11th October 1883).

*An Act to amend the Cattle-Trespass Act, 1871.*

WHEREAS it is expedient to amend the Cattle-Trespass Act, 1871; It is hereby enacted as follows:—

1. The Local Government may, from time to time, by order notified in the local official Gazette—

Power for Local Government to transfer functions of District Magistrate or Local Government to local authority, and direct that surplus receipts be credited to local fund.

(a) transfer to any local authority, within any part of the territories under its administration in which the Cattle-Trespass Act, 1871, is in operation, all or any of the functions of the Local Government or the Magistrate of the District under that Act, within the local area

subject to the jurisdiction of the local authority; or

(b) direct that the whole or any part of the surplus accruing in any district under section eighteen of that Act shall be placed to the credit of such local fund or funds as may be formed for any local area or local areas comprised in that district ;

and may, from time to time, in like manner, cancel any order made under this section.

By notifications published in the *Calcutta Gazette* of April 6th, 1887, the functions of the Magistrate of the District under Chapters I to III of the Cattle-Trespass Act, have been transferred to the District Boards.

Definitions.

2. In this Act—

‘local authority’ means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area ; and

‘local fund’ means any fund under the control or management of a local authority.

## ACT No. XI of 1879.

[As amended by Act No. XV of 1885.]

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 21st July 1879.)

### *The Local Authorities Loan Act, 1879.*

WHEREAS it is expedient to re-enact the Local Public Works Loan Act, 1871, with the amendments hereinafter appearing ; It is hereby enacted as follows :—

Preamble.

Short title.

Local extent. Commencement.

1. This Act may be called ‘The Local Authorities Loan Act, 1879.’

It extends to the whole of British India, and shall come into force upon the passing thereof.

2. The Local Public Works Loan Act, 1871, is hereby repealed. But all applications, declarations, authorizations, attachments, loans, and rules made under the said Act shall be deemed to have been made under this Act.

3. In this Act, 'local authority' means anybody corporate, municipal committee, or other persons legally entitled to the control or management of any local or municipal fund, or legally entitled to impose any cess, rate, duty or tax upon any persons within any local area; and

'Funds,' used with reference to any local authority, includes any local or municipal fund to the control or management of which such authority is legally entitled, and any cess, rate, duty or tax which such authority is legally entitled to impose, and any property vested in such authority.

4. Any local authority desiring to obtain a loan, on the security of its funds or any portion thereof, for the carrying out of any works which it is legally authorized to carry out may, in manner provided by the rules made by the Governor-General in Council under the power hereinafter conferred, apply to the Local Government for such loan.

Loans for works may be granted on security of funds.

5. The Governor-General in Council may, from time to time, make rules consistent with this Act as to—

(1) the nature of the funds on the security of which loans may be made;

(2) the works for which loans may be made;

(3) the manner of making applications for loans;

(4) the enquiries to be made in relation to such loans, and the manner of conducting such enquiries;

(5) the cases and the forms in which particulars of applications and proceedings, and orders thereon, shall be published;

(6) the cases in which the Local Government may make loans without the previous sanction of the Governor-General in Council, and the cases in which such previous sanction must be obtained;

(7) the manner of recording and enforcing the conditions on which such loans are to be made;

(8) the manner and time of making loans;

(9) the inspection of any works carried out by means of loans;

(10) the instalments by which loans shall be repaid, the interest to be charged on loans, and the manner and time of repaying loans and of paying the interest thereon;

(11) the sum to be charged against the funds which are to form the security for the loan, as costs in effecting the loan;

(12) the attachment of such securities, and the manner of disposing of or collecting them ;

(13) the accounts to be kept in respect of loans, and as to all other matters incidental to carrying this Act into effect.

All such rules shall be published in the *Gazette of India*.

The rules prescribed under this section are appended to the Act.

6. If any loan made under such rules, or any interest or costs due in respect thereof, is or are not repaid according to the conditions of the loan, the Local Government may attach the funds on the security of which the loan was made. After such attachment, no person except an officer appointed in this behalf by the Local Government shall in any way deal with the attached funds ; but such officer may do all acts in respect thereof which the borrowers might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the loan and of all interest and costs due in respect thereof, and of all expenses caused by the attachment and subsequent proceedings.

Provided that no such attachments shall defeat or prejudice any debt for which the funds attached were previously pledged in accordance with law, but all such prior charges shall be paid out of the proceeds of the funds before any part of the proceeds is applied to the satisfaction of a liability incurred under this Act.

7. The Local Government, with the previous sanction of the Governor-General in Council, may authorize any local authority which might, under the provisions hereinbefore contained, have borrowed money for any work upon the security of its funds, to borrow money from any other person for such work upon such security ; and if any such loan or the interest thereon is not duly paid, the Local Government shall, upon the application of the lender, attach such funds for his benefit in manner provided by section six.

The Governor-General in Council may, in respect of loans to be taken under this section, exercise the power conferred by section five, so far as the same may be applicable to the case of such loans.

The rules prescribed under this section are appended to the Act.

8. Except as provided by this Act and the rules made hereunder, no local authority shall for any purpose borrow money upon or otherwise charge its funds; and any contract otherwise made for that purpose after the passing of this Act shall be void:

Provided that nothing herein contained shall be deemed—

(a) to preclude the Municipality of Calcutta, Madras or Bombay, or the Trustees of the Port of Bombay, or the Commissioners for making improvements in the Port of Calcutta, or any like body hereafter created for the Port of Madras, from exercising the borrowing powers conferred on them by any special enactment now or hereafter in force; or

(b) to preclude any other local authority from exercising the borrowing power (if any) conferred on it by any such enactment with a view to raising money for any purpose other than the carrying out of works; or

(c) to affect the power conferred on any local authority by any such enactment to charge its funds by guaranteeing the payment of interest on money to be applied to any purpose to which the funds of the local authority can legally be applied.

Clause (c) has been added by the amending Act, Act No. XV of 1885.

9. The Secretary of State in Council shall be entitled to the remedy mentioned in section six for the recovery of any money lent by him to any local authority before the fifth day of September 1871, and the interest due on such money; and the Governor-General in Council or the Local Government may declare that any person who, before the said fifth day of September 1871, has lent money to any local authority shall be entitled to the said remedy for the recovery of such money or of the interest due thereon.

## NOTIFICATION.

*Simla, the 17th August 1883.*

No. 2718.—In exercise of the powers conferred by sections 5 and 7 of the Local Authorities Loan Act, 1879, the Governor-General in Council has made the following rules for the raising of loans by Local Authorities in the open market:—

1. These rules shall come into force on the 1st day of September 1883. On and from that date the rules published with Notification No. 3745, dated 8th November 1879, in so far as

they relate to the authorization of loans, shall be rescinded except as regards loans authorized before these rules come into force.

2. In these rules (1) "The Act" means "The Local Authorities Loan Act, 1879;" (2) "Local Authority" and (3) "Funds" have the meanings assigned to them respectively in the Act; (4) "The Local Authority" means "The Local Authority applying for permission to raise, or as the case may be, raising or having raised the loan;" and (5) "Loan" means "A Loan under the Act."

3. A loan must be defined in rupees and not by the sterling or any other foreign standard

4. No loan shall be raised except for the construction or repair of works of public utility within the local limits of the jurisdiction of the Local Authority, or for the benefit of the inhabitants within those limits.

5. Whenever it is desired to obtain the authorization of the Government to the raising of a loan under section 7 of the Act, a statement shall be submitted to the Local Government showing—

1st, the work or works for the construction or repair of which the loan is required, and an estimate of the cost thereof:

2nd, the amount which it is proposed to borrow:

3rd, the fund or funds on the security of which it is proposed to borrow:

4th, the law or laws under which the said fund or funds is or are levied, received or held:

5th, the period for which the loan is required, the number and amount of the instalments, if any, in which it is proposed that the loan shall be taken, the dates proposed for receiving such instalments, and the instalments, if any, in which it is proposed to repay the loan:

6th, the yearly proceeds of each of the funds received or held by the Local Authority:

7th, all expenditure incurred by the Local Authority in each of the three last preceding years:

8th, all existing prior charges upon the funds of the Local Authority.

6. The Local Government shall cause such enquiry as it thinks necessary or expedient to be made into the statements contained in the application and into the use and value of the proposed work.



7. If it appears to the Local Government that the loan ought not to be raised, it shall reject the application.

8. If it appears to the Local Government probable that the loan ought to be raised, it shall cause to be published in the local official Gazette, and otherwise, as it deems fit within the local limits of the jurisdiction of the Local Authority, a copy of the application and such particulars in regard to any enquiry made under Rule 6 as it may think necessary.

9. After the expiry of one month from such publication, and after calling for any further information which it may require, and, considering any objections which may be preferred, the Local Government may either reject the application, or refer it for the orders of the Governor-General in Council.

10. The Local Government shall make such provision as may seem to be necessary for the proper inspection of all works which are being carried out by means of a loan, and for ascertaining and securing that the loan is duly applied to the purposes for which it is raised. Every such work, and the accounts connected therewith, shall be open at all times to the inspection of the Superintending or Executive Engineer in whose division the work is situate, and of any person who may be authorized to inspect the accounts of the local authority, and of any other person specially authorized by the Local Government in this behalf.

11. The cost of any enquiry made under Rule 6, of advertisements published under Rule 8, of inspections made under Rule 10, and of any other proceedings by order of the Local Government or the Governor-General in Council under these rules, shall be determined by the Local Government, and shall be paid by the Local Authority.

12. The Local Authority shall give to the Accountant-General and the Local Government any information which they may require regarding the expenditure of the loan, and regarding its funds.

13. An attachment of any funds under section 6 of the Act shall be made by a notice to the Local Authority, prohibiting the collection or management of such funds by the Local Authority, and vesting the administration thereof in such officer as the Local Government may appoint. Such notice shall be published in the local official Gazette, and otherwise, as may be directed by the Local Government, within the local limits of the Local Authority. The moneys collected or received under such attachment shall be paid to the lender, and the accounts of moneys so collected, and of the cost of collection, shall be prepared in such form as the Local Government may from time to time direct. A copy of the accounts shall be delivered to the local authority, and published in the local official Gazette.

No. 2749.—In exercise of the power conferred by section 5 of the Local Authorities Loan Act, 1879, the Governor-General in Council has made the following rules for the grant of loans to Local Authorities by the Government:—

1. These rules shall come into force on the 1st day of September 1883. On and from that date the rules published with Notification No. 3745, dated 8th November 1879, in so far as they relate to the granting of loans, shall be rescinded except as regards loans granted before these rules come into force.

2. In these rules (1) "The Act" means "The Local Authorities Loan Act, 1879," (2) "Local Authority" and (3) "Funds" have the meanings assigned to them respectively in the Act; (4) "The Local Authority" means "The Local Authority applying for or, as the case may be, receiving or having received the loan;" and (5) "Loan" means "A Loan under the Act."

3. A loan must be defined in rupees and not by the sterling or any other foreign standard.

4. No loan shall be granted except for the construction or repair of works of public utility within the local limits of the jurisdiction of the Local Authority, or for the benefit of the inhabitants within those limits.

5. Without the consent of the Government of India, no loan shall be granted to any District Committee for the construction of any public works, unless it be estimated that a direct net revenue will be derived therefrom equal to at least four per centum per annum on its capital cost: Provided, however, that the Local Government may make a loan, not exceeding Rs. 5,000, to a District Committee, for a work designed especially to employ labour for the purpose of relieving distress.

NOTE.—A District Committee does not include a municipal body.

6. An application for a loan shall state—

1st, the work or works for the construction or repair of which the loan is required, and an estimate of the cost thereof;

2nd, the amount which it is proposed to borrow;

3rd, the funds on the security of which it is proposed to borrow;

4th, the law or laws under which the said fund or funds is or are levied, received or held;

5th, the period for which the loan is required, the number and amount of the instalments, if any, in which it is proposed that the loan shall be taken, the dates proposed for receiving such instalments, and the instalments, if any, in which it is proposed to repay the loan;

6th, the yearly proceeds of each of the funds received or held by the Local Authority ;

7th, all expenditure incurred by the Local Authority in each of the three last preceding years ;

8th, all existing prior charges upon the funds of the Local Authority.

7. The Local Government shall cause such enquiry as it thinks necessary or expedient to be made into the statements contained in the application and into the use and value of the proposed work.

8. If it appears to the Local Government that the loan ought not to be granted, it shall reject the application.

9. If it appears to the Local Government probable that the loan ought to be granted, it shall cause to be published in the local official Gazette, and otherwise, as it deem fit within the local limits of the jurisdiction of the Local Authority, a copy of the application and such particulars in regard to any enquiry made under Rule 7, as it may think necessary.

10. After the expiry of one month from such publication and after calling for any further information which it may require, and, considering any objections which may be preferred, the Local Government may either reject the application or, subject to the provisions of Rule 11, grant the loan, or refer the application for the orders of the Governor-General in Council.

11. (a) Save as provided in clause (b) of this rule, the Local Government may make a loan from any sums which the Governor-General in Council allots for the purpose.

(b) If the loan exceeds Rs. 5,000, the previous sanction of the Governor General in Council is necessary.

12. The Local Government shall make such provision as may seem to be necessary for the proper inspection of all works which are being carried out by means of a loan, and for ascertaining and securing that the loan is duly applied to the purposes for which it is made. Every such work, and the accounts connected therewith, shall be open at all times to the inspection of the Superintending or Executive Engineer in whose division the work is situate, and of any person who may be authorised to inspect the accounts of the Local Authority, and of any other person specially authorised by the Local Government in this behalf.

13. If the Local Government considers that the conditions on which a loan was granted have not been fulfilled, or that the Local Authority has failed to comply with any of the requirements of these rules, it may, at any time, order that no further payments shall be made on account of such loan, and recover

the amount advanced, with interest thereon, in the manner prescribed by section 6 of the Act.

14. Interest shall be charged half-yearly on each loan at the rate agreed upon, and shall be reckoned and paid on each instalment from the date on which it is received.

15. The Local Authority may, at any time with the previous consent of the Local Government, repay the whole or any part of a loan made from the public treasury in advance of the periods fixed by the conditions of the loan.

16. The cost of any enquiry made under Rule 7, of advertisements published under Rule 9, of inspections made under Rule 12, and any other proceedings by order of the Local Government or the Governor-General in Council under these rules, shall be determined by the Local Government, and shall be paid by the Local Authority.

17. (a) The accounts of every loan shall be kept by the Accountant-General of the Province in which it is made.

(b) The Local Authority shall give to the Accountant-General and the Local Government any information which they may require regarding the expenditure of the loan and regarding its funds.

18. An annual statement of all loans granted under the Act, repayments due and made during the year, and balances outstanding at the beginning and end of the year in each province, or under each Local Government, shall be prepared by the Accountant-General and submitted to the Government of India through the Local Government which shall add a report of the progress of the works. Such statement shall be published in the local official Gazette.

19. An attachment of any funds under section 6 of the Act shall be made by a notice to the Local Authority prohibiting the collection or management of such funds by the Local Authority, and vesting the administration thereof in such officer as the Local Government may appoint. Such notice shall be published in the local official Gazette, and otherwise, as may be directed by the Local Government within the local limits of the Local Authority. The moneys collected or received under such attachment shall be paid into the Government Treasury ; and the accounts of moneys so collected, and of the cost of the collection shall be prepared in such form as the Local Government may from time to time direct. A copy of the accounts shall be delivered to the Local Authority, and published in the local official Gazette.

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ACT No. III OF 1883.

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.  
(Received the assent of the Lieutenant-Governor on 26th March 1883,  
and of the Governor-General on the 25th April 1883.)

*An Act to authorize the making and to regulate the  
working of Tramways in Bengal.*

WHEREAS it is expedient to facilitate the construction and to  
regulate the working of tramways within  
the territories subject to the Government  
of the Lieutenant-Governor of Bengal :

It is enacted as follows :—

1. This Act may be cited for all purposes as “The Bengal  
Tramways Act, 1883.” It shall come  
Short title and com- into force from the date on which it may  
mencement of Act. be published in the *Calcutta Gazette* with  
the assent of the Governor-General

2. For the purposes of this Act, the terms hereinafter men-  
tioned shall, unless there be something  
Interpretation. repugnant in the subject or context, have  
the meanings hereinafter assigned to  
them.

The term “Local Authority” shall mean (1) bodies of per-  
sons for the time being appointed or elect-  
“Local Authority.” ed to conduct the affairs of any mun-  
cipality under Bengal Act V of 1876, or  
other law for the time being in force for the purpose of regu-  
lating municipalities in Bengal ; (2) any Board, Committee,  
Department or other body or person in whom a road as defined  
by this Act is vested, or who have the power to maintain or  
repair such road.

The term “Area” in relation to a local authority shall mean  
“Area” the area within the jurisdiction of such  
local authority.

The term “Municipality” shall mean any place in which  
Bengal Act V of 1876, or any other law  
“Municipality.” for the time being in respect of Bengal  
Municipalities, is in force.

The term “Road” shall mean any carriage way, being a  
public thoroughfare, and the carriage way  
“Road.” of any bridge forming part of or leading  
to the same.

The term "Tramway" shall mean a tramway constructed "Tramway." under this Act.

Bengal Act V of 1876 was repealed by Bengal Act III of 1884.

The definition of "Local Authority" here given will include a District Board, a Local Board to which the maintenance and repair of the road has been made over, and a Union Committee. Only District Boards, however, are authorized to construct tramways by the Local Self-Government Act, and such works are obviously beyond the means of inferior local authorities. By section 80 of the Act the District Board is authorized to construct tramways, either singly or in combination with any other Municipal or local authority.

*Public thoroughfare*

As to what constitutes a public thoroughfare or highway, see note to section 73 of the Local Self-Government Act.

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## PART I.

The provisions of this Part are new, but those of the remaining parts are mostly taken from the Calcutta Tramways Act, B. C. Act I of 1880.

### *Orders by the Local Government authorizing the construction of Tramways.*

By whom orders authorizing the construction of tramways may be obtained.

3. An order made by the Local Government authorizing the construction of any tramways in any municipality or area, may be obtained by—

1st.—The local authority of such municipality or area.

2nd.—Any person, persons, corporation or company with the consent of such local authority.

And any such local authority, person, persons, corporation or company shall be deemed to be "promoters" of a tramway, and are in this Act referred to as "the promoters."

Where the local authority consists of a body of persons, Board

When applications for or Committee, no application shall be made to the Local Government for the purpose of authorizing the construction of tramways in a municipality or area until a resolution, approving of the intention to make such application, shall be passed at a special meeting of the members constituting the local authority in such municipality or area.

Such special meeting shall not be held unless a month's previous notice of the same and of the purpose thereof has been given in the manner in which notices of meeting of such local authority are usually given, and such notice shall require that all objections to the proposed tramways shall be submitted for the consideration of the local authority, before the date fixed for the special meeting.

Such resolution shall not be passed, unless two-thirds of the members constituting such local authority are present and vote at such special meeting, and a majority of those present and voting concur in the resolution.

*Seemle* that two-thirds of the whole number of members constituting the local authority when complete is necessary. "When the corporate body consists of a definite number, and it is provided that an act shall be done by the body for the time being, or the major [*Seemle* or any other] part of them, it has been held that a majority [*Seemle* or other prescribed proportion] of the whole must meet for the purpose, and if the body be so reduced that a majority [*Seemle* or other proportion prescribed] of the whole number no longer remains, the act cannot be done. See *Rev. v. Beltranger*, 4 T R, 810, and the cases there cited, and *the Bailiffs of Godmanchester v. Phillips*, 1 A. & E, 550"—*Rawlinson's M. C. Acts*, p. 132.

Documents to be forwarded with application. 4. At the time of making an application for such order, the promoters shall also forward to the Local Government—

1st.—A memorial signed by the promoters descriptive of the undertaking

2nd.—A copy of the proceedings and resolution of the special meeting held under the provisions of section three.

3rd.—A copy of the provisional agreement made between the promoters and local authority, where the promoters are not themselves the local authority.

4th.—An estimate of the proposed works, signed by the persons making the same.

5th.—All necessary maps, plans, sections, and drawings of the proposed work.

5. The Local Government shall consider the application and

Local Government to determine on application and objection. may, if it think fit, direct an enquiry as to the propriety of proceeding upon such application, and it shall consider any objection thereto that may be filed on or before such day as it may from time to time appoint.

Where it appears to the Local Government expedient and

Local Government may make and publish order. proper that the application should be granted with or without addition or modification, or subject or not to any restriction or condition, the Local Government may settle and make an order accordingly, and such order shall be published in the

*Calcutta Gazette*.

Every such order shall empower the promoters therein specified to make the tramway upon the gauge and in manner therein described, and shall contain such provisions, fix such maximum

Form and contents of order.

rates of fare, and prescribe such penalties for default as (subject to the provisions of this Act) the Local Government according to the nature of the application and the facts and circumstances of each case thinks fit.

Where the promoters are not the local authority, the order shall set forth the agreement made between the promoters and the local authority, and one of the provisions of such agreement shall settle the manner in which the value of the tramway shall be calculated in the event of its purchase by the local authority, under sections thirty-nine, forty, or forty-one.

6. The Local Government on the application of any promoter empowered by an order to construct a tramway may, from time to time, revoke, amend or vary such order by a further order :

Provided that whenever the promoters are not the local authority, the Local Government shall, before passing such order, call upon the local authority to state any objection it may have to such application.

The term "*Promoters*" is defined in section 3.

7. Subject to, and in accordance with, the provisions of this Act, the Local Government may, on a joint application or on two or more separate applications, settle and make an order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof, and all the provisions of this Act, which relate to the construction of tramways, shall extend and apply to the construction of the whole, and the separate parts of such tramway as last aforesaid ; and the form of the order may be adapted according to the circumstances of the case.

By section 80 of the Local Self-Government Act, the District Board may combine with any municipal authority or any other local authority to construct and maintain a tramway within, or partly within and partly without its own district.

8. Where it is proposed to lay down a tramway in two or more areas, and any local authority having jurisdiction in any of such areas does not consent thereto, the Local Government may nevertheless make an order authorising the construction of such tramways if it is satisfied after enquiry that two-thirds of the length of



such tramway is proposed to be laid in an area or areas the local authority of which area or areas does consent thereto.

"Area" and "local authority" are defined in section 2.

9. If the promoters empowered by any order under this Act

Promoters' powers to to make a tramway do not, within the period  
cease at expiration of prescribed in such order, complete the  
prescribed time. tramway and open it for public traffic; or,

if the works are not substantially commenced within the latest  
date prescribed in such order for their commencement, or,

if the works, having been commenced, are suspended without a  
reason sufficient, in the opinion of the Local Government, to  
warrant such suspension,

the powers given by the order to the promoters for constructing  
such tramway, executing such works or otherwise in relation  
thereto, shall cease to be exercised to the extent and in the  
manner specified in such order.

A notice inserted by the Local Government in the *Calcutta Gazette*  
to the effect that a tramway has not been completed and opened  
for public traffic, or that the works have not been substantially  
commenced, or that they have been suspended without sufficient  
reason, shall be conclusive evidence for the purpose of this sec-  
tion of such non-completion, non-commencement or suspension.

The term "*Promoters*" is defined in section 3.

10. When the local authority of any area are the promoters

Payment of expenses of any tramway, the expenses incurred by  
when local authority them in constructing and working such  
are promoters. tramway under the provisions of this Act  
including the expenses preparatory thereto, may be paid out of  
the funds under the control of such local authority.

By section 80 of the Local Self-Government Act, a District Board  
may construct tramways, and by the seventh clause of section 53, the  
District Fund may be devoted to expenses incurred under that section.

"Area" is defined in section 2.

11. When the local authority are not the promoters, they

Rent for use of road may fix and demand from the promoters  
when local authority such rent for the use of roads as may be  
are not promoters. agreed upon.

"Road" is defined in section 2.

12. Any moneys received by any local authority by way of

Application of rent rent or tolls in respect of any tramway  
or tolls. constructed and worked under the pro-  
visions of this Act, may be applied by

them to the purposes for which other funds under the control of such local authority may be applied

By section 52, clause (5) of the Local Self-Government Act, all receipts in respect of tramways constructed by, vested in, or placed under the administration and control of a District Board, shall be credited to the District Fund.

13. The Local Government may from time to time make and when made, may revise, modify, annul, add to or confirm, any rules it may be expedient to make for the purpose of carrying this Act into execution.

## PART II.

The provisions of this Part are mostly taken from the Calcutta Tramways Act, B. C. Act I of 1880.

### *Construction of Tramways.*

14. Every tramway shall be constructed and maintained on such gauge and in such manner as may be specified in the order of the Local Government empowering the construction of such tramway and before the work of construction is begun, the maps, drawings, and specification shewing the proposed construction of such tramway shall be submitted to the local authority and be approved by it, and the cars and carriages intended to run on the tramways shall also be of such construction and furnished with such brakes and other appliances, as shall have been approved by such local authority.

### Section 5 of the Calcutta Act.

15. The promoters may, from time to time, for the purpose of constructing and maintaining any tramways under this Act, open and break up the soil and pavement of any of the roads upon which the construction and maintenance of such tramway has been authorized by the order of the Local Government in that behalf, and therein lay sleepers and rails, and repair, renew, alter or remove the same; and may, for the purposes aforesaid, do in and on such roads all other acts which shall from time to time be necessary for constructing and maintaining their tramways:

Provided that when the powers granted under this section shall

be exercised by the promoters, who are not the local authority, such powers shall be exercised subject to the following regulations :—

- 1st.—They shall give to the local authority notice in writing of their intention to open or break up any such road, specifying the time at which they will begin to do so, and the portion of the road proposed to be opened or broken up. Such notice to be given at least seven days before the commencement of the work.
- 2nd.—They shall not open or break up or alter the level of any such road, except under the superintendence and to the reasonable satisfaction of the local authority, for which superintendence the promoters shall pay all reasonable expenses, unless the local authority neglect to give such superintendence at the time specified in the notice, or discontinue the same during the work.
- 3rd.—They shall not, without the consent of the local authority in writing, open or break up at any one time a greater length than a quarter of a mile in any one length, and shall leave an interval of at least a quarter of a mile between any two such places at which they may open or break up such road.
- 4th.—They shall, with all convenient speed, and in all cases within two calendar months at the most, unless the local authority otherwise consent in writing, complete the work for which the said road shall be broken up, and fill in the ground, and make good the surface, and, to the reasonable satisfaction of the local authority, restore the road to as good a condition as that in which it was before it was opened or broken up, and clear away all surplus material or rubbish occasioned thereby.
- 5th.—They shall in the meantime, when such road is opened or broken up, cause it to be fenced and watched, and to be properly lighted at night.
- 6th.—They shall make good all damage done to the gas and water pipes, sewers, drains, culverts, bridges, and fences whether belonging to the local authority or to private individuals by the disturbance thereof, and shall not cause any interruption in the supply of gas in or through any main or pipe, or the flow of water through any pipe, drain, culvert, bridge or other waterway : if they fail to make such damage good or to remove such interruption within reasonable time, the local authority may, without prejudice to the penalties payable under section twenty-nine, cause the same to be made good at the promoters' expense.

"Road" and "Local Authority" are defined in section 2. "Promoters" is defined in section 3.

This section is taken from section 12 of the Calcutta Tramways Act.

16. The promoters shall, at their own expense at all times, maintain and keep in good condition and repair, in such manner as the local authority shall direct, the rails of which any of their tramways shall for the time being consist, and so much of any road as lies between the rails of any tramway; and in the case of double lines or turnouts or sidings, the portion of the road between the tramways, and in every case so much of the road as extends eighteen inches beyond the rails of and on each side of any such tramway; and in the course of carrying out repairs, it shall not be necessary to give notice thereof to the local authority.

Section 13 of the Calcutta Act.

17. In exercising the powers given to them by the last two preceding sections, the promoters shall arrange their work so as to afford the least possible obstruction to the ordinary traffic of the roads or to the ordinary means of approach to houses situated on either side of the roads, and so as to admit of as free and unrestricted entry at all times into the sewers, drains, culverts, and bridges for the time being in use as is possible under the circumstances, and also so as to enable proper repairs to be made to water or gas pipes by the direction of the local authority.

Section 14 of the Calcutta Act.

18. Nothing in this Act, or in any bye-law made under this Act, shall take away or abridge the right of the public to pass along or across every or any part of any road along or across which any tramway is laid, whether on or off the tramway, with carriages not having flange wheels or wheels suitable to run on rails. But the right of the public shall not include the use of any new roadway, embankment or earthwork constructed or acquired for the special and exclusive use of the tramway.

Section 15 of the Calcutta Act.

19. Notwithstanding anything in this Act contained, the promoters shall not acquire, or be deemed to acquire, any right other than that of user of any road along or across which they lay any tramway.

"Promoters" is defined in section 3, and "Road" in section 2.

This section follows section 17 of the Calcutta Act.

### PART III

The provisions of this Part are nearly all taken from the Calcutta Tramways Act, B. C. Act I of 1880.

#### *Working of Tramways*

20. No tramway shall be opened for public traffic until the same has been inspected and certified by an Engineer or other officer appointed in that behalf by the Local Government to be fit for such traffic.

Section 6 of the Calcutta Act.

21. When a tramway has been completed under the provisions of this Act and certified to be fit to be opened for public traffic under the last preceding section, the local authority or other promoters may, subject to the provisions of this Act, place and run carriages on such tramway, and demand and take tolls and charges in respect of the use of such carriages; or may by lease, to be approved of by the Local Government, demise to any person, persons, corporation or company the right of user by such person, persons, corporation or company of the tramway, and of demanding and taking in respect of the same the tolls and charges authorised; or such authority may leave such tramway open to the public, and may in respect of such user demand and take the tolls and charges authorised.

22. The cars and carriages of the promoters on the lines of the tramways shall be worked with such power, animal, mechanical or otherwise, as may be specified in the order issued by the Local Government under section five.

Section 7 of the Calcutta Act.

23. The promoters may use on their tramways carriages with flange wheels or wheels suitable for running on the prescribed form of rail, and, subject to the provisions of this Act, they shall have the exclusive use of their tramways for carriages with flange wheels, or other wheels suitable for the said form of rail.

Section 8 of the Calcutta Act.

24. The promoters shall have power from time to time to fix the rates of fares for carrying passengers and goods in the said cars or carriages, and may demand and take the

same for every passenger travelling upon any of their tramways, or for the carriage of goods by their tramways :

Provided that the rate of fare for each person or parcel shall not exceed the maximum rates authorized in the order of the Local Government issued under section five.

Section 9 of the Calcutta Act.

25. A printed list in English and the vernacular of the district of all the fares and charges fixed under the authority of the last preceding section and a printed copy in the same languages of all bye-laws in force as hereinafter mentioned, shall be exhibited in a conspicuous place inside each of the cars or carriages used by the promoters upon any of their tramways.

The fares and charges fixed as aforesaid shall be paid to such persons at such places upon or near to the tramways, and in such manner and under such regulations as the promoters may, by notice to be annexed to the list of fares, from time to time appoint.

The term "*Promoters*" is defined in section 3.

This section follows section 10 of the Calcutta Act

26. The members constituting the local authority in a municipality or area in special general meeting may, subject to confirmation thereof by the local Government, from time to time, make such bye-laws as to the rate of speed, number of passengers, and mode of use of the tramways as the convenience and safety of the public may require, and as are not inconsistent with this Act or any rules framed under section thirteen.

The bye-laws must also be reasonable and not inconsistent with any other laws in force. See note to section 139 of the Local Self-Government Act.

*Local Authority* and *Area* are defined in section 2.

This section is taken from section 24 of the Calcutta Act.

27. The promoters may, subject to make certain bye-laws. confirmation as aforesaid, from time to time, make such bye-laws—

for preventing disturbances or the entry of person suffering from infectious diseases, or the commission of any nuisance in or upon any carriage, or in or against any premises belonging to them; and

for regulating the travelling in or upon any carriage belonging to them ;

Provided that such bye-laws are not inconsistent with this Act or with any rules or bye-laws framed under sections thirteen and twenty-six.

Such bye-laws must also be reasonable and not inconsistent with any other laws in force. See note to section 139 of the Local Self-Government Act

The term "*Promoters*" is defined in section 3.

This section is taken from section 24 of the Calcutta Act.

28. All rules and bye-laws made under sections thirteen, twenty-six, and twenty-seven, and confirmed by the Local Government, shall, when so confirmed, be published in the *Calcutta Gazette*, and such rules and bye-laws when so published shall, until repealed or altered, be of the same effect as if they had been inserted in this Act :

Provided that no rules and bye-laws shall be confirmed by the Local Government until they shall have been published for at least one month previously in the *Calcutta Gazette* and in one or more of the Local newspapers (if any exist) which circulate in the district to which such rules and bye-laws relate.

#### PART IV.

The provisions of this Part are mostly taken from the Calcutta Tramways Act, B. C. Act I of 1880.

#### *Offences.*

29. If the promoters, not being the local authority, fail in any respect to comply with the provisions of sections fourteen, fifteen, sixteen, seventeen, twenty, and twenty-two of this Act, they shall for every such offence (without prejudice to the enforcement of specific performance of the requirements of this Act, or to any other remedy against them), upon complaint of any person injuriously affected thereby, be liable to a penalty not exceeding two hundred rupees and to a further penalty not exceeding fifty rupees for each day during which any such failure continues after the first day on which such penalty is incurred.

This section is taken from section 18 of the Calcutta Act.

30. If any person wilfully obstructs any person acting under the authority of the promoters in the lawful exercise of their powers in setting out or making, laying down, repairing or

renewing a tramway, or injures or destroys any mark made for the purpose of setting out the lines of the tramway, he shall, for every offence, be liable to a penalty not exceeding fifty rupees, and shall also be liable to pay such damages as may be awarded in respect of such injury by any competent court.

Section 19 of the Calcutta Act.

31. If any person without lawful excuse (the proof whereof Penalty for interfer- shall lie on him) wilfully does any of ing with tramway. the following things, namely—

interferes with, removes or alters any part of a tramway of the promoters, or of the works connected therewith ;

does or causes to be done anything in such a manner as to obstruct any carriage using the tramways ;

or knowingly aids or assists in the doing of such thing,

he shall for every such offence be liable (in addition to any proceedings by way of criminal charge or otherwise to which he may be subject) to a penalty not exceeding one hundred rupees.

Section 20 of the Calcutta Act.

32. If any person travelling or having travelled in any carriage of the promoters avoids or attempts

Penalty for avoiding payment of proper fare.

to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such carriage beyond such distance and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage, every such person shall, for every such offence, be liable to a penalty not exceeding ten rupees.

Section 21 of the Calcutta Act.

33. It shall be lawful for any servant of the promoters to

Servant of promoters may arrest persons avoiding payment of fare.

arrest and take to the nearest police-station any person who shall be discovered in committing or attempting to commit any such offence as in the last preceding section mentioned, and who shall refuse to give his name and residence, and is unknown to such servant.

Section 22 of the Calcutta Act.

34. No person shall be entitled to carry or to require to be carried on any tramway any goods which

Carriage of dangerous or offensive goods.

may be of a dangerous or offensive nature, and if any person send by any tramway



any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant of the promoters with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding fifty rupees for every such offence, and it shall be lawful for the promoters to refuse to accept or carry any parcel that they may suspect to contain goods of a dangerous or offensive nature, or to require the same to be opened to ascertain the fact.

Section 23 of the Calcutta Act

The term "*Promoters*" used in the above six sections is defined in section 3.

35. Any person offending against any bye-law made under the provisions of this Act, shall forfeit for every offence any sum not exceeding twenty rupees to be imposed in such bye-laws as a penalty for such offence.

Section 25 of the Calcutta Act.

## PART V.

### *Miscellaneous.*

36. The promoters shall be answerable for all accidents, damages, and injuries happening through their act or default, or through the act or default of any person in their employment by reason or in consequence of any of their works or carriages, and in all cases where the promoters are not the local authority, they shall save harmless the local authorities and their respective officers and servants from all damages and costs in respect of such accidents, damages, and injuries.

Section 27 of the Calcutta Act.

37. Nothing in this Act shall limit the powers of the local authority or the police to regulate the passage of any traffic along or across any road along or across which any tramways are laid down, and such local authority or police may exercise their authority as well on as off the tramway, and with respect as well to the traffic of the promoters as to the traffic of other persons.

The local authority shall not be liable to pay to the promoters

any compensation for loss of traffic occasioned by the reasonable exercise of such authority.

Section 28 of the Calcutta Act.

38. Nothing in this Act shall be construed to prevent the local authority or any corporate body or persons, in the exercise of the powers conferred upon them under any law for the time being in force, from opening, breaking up, widening, altering, diverting or improving any of the roads, bridges, drains or culverts traversed by the tramways for the purposes for which they may now lawfully open, break up, widen, alter, divert or improve the same: Provided

(1) that they shall cause as little detriment or inconvenience to the promoters as circumstances admit;

(2) that they may (if absolutely necessary, but not otherwise) order the temporary stoppage of traffic on the tramways or any of them on giving twenty-four hours' previous notice in writing to the promoters;

(3) that before they commence any work, whereby the traffic on the tramway will be interrupted, they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the promoters notice of their intention to commence such work, specifying the time at which they will begin to do so: such notice to be given eighteen hours at least before the commencement of the work;

(4) that in the event of their so interfering with or stopping the running of any tramway under this section, an abatement proportioned to the length of road over which and time during which running is stopped, shall be made from the rent (if any) reserved and payable by the promoters;

(5) that any alteration of the position of any of the tramways, or the making good of any injury or damage that may be occasioned thereto by reason of such widening, alteration or improvement, shall be executed by the promoters at the expense of the local authority.

"Road" is defined in section 2 and "Promoters" in section 3.

This section is taken from section 29 of the Calcutta Act.

#### *Discontinuance of Tramways.*

39. If at any time after the opening of any tramway for traffic, the promoters discontinue the working of such tramway or of any part thereof for the space of three calendar months (such discontinuance not being occasioned by circum-

Tramways to be removed in certain cases.

stances beyond the control of such promoters, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control), and such discontinuance is proved to the satisfaction of the Local Government, the Local Government, if it think fit, may by order declare that the powers of the promoters in respect of such tramway or the part thereof so discontinued, shall from the date of such order be at an end, and thereupon the said powers of the promoters shall cease and determine, unless the same are purchased by the local authority in manner by this Act provided. Where such order has been made the engineer or other officer appointed on that behalf by the Local Government may, at any time after the expiration of two months from the date of such order, remove the tramway or part of the tramway so discontinued, and the promoters shall pay to such engineer or officer the cost of such removal and of the making good of the road by such engineer or officer. Such cost to be certified by such engineer or officer, whose certificate shall be final and conclusive. And if the promoters fail to pay the amount so certified within one calendar month after delivery to them of such certificate or a copy thereof, such engineer or officer may, without any previous notice to the promoters (but without prejudice to any other remedy which he may have for the recovery of the amount) sell and dispose of the materials of the tramway or part of the tramway removed, either by public auction or private sale, and for such sum or sums and to such person or persons as such engineer or officer may think fit; and may out of the proceeds of such sale make and reimburse himself the amount of cost certified as aforesaid and of the costs of sale, and the balance (if any) of the proceeds of the sale shall be paid over by the said engineer or officer to the promoters.

The term "*Promoters*" is defined in section 3.

*Inability of Promoters.*

40. If at any time after the opening of any tramway it appears to the local authority, or to the  
 Proceedings in cases of  
 inability of promoters. Magistrate of the district in which such tramway is situate, that the promoters of such tramway are insolvents, or that they are unable to maintain such tramway, or work the same with advantage to the public, the Local Government, upon a representation to that effect made by such Magistrate or local authority, may direct an enquiry by a referee into the truth of the representation, and if the referee shall find that the promoters are such insolvents, or that they are unable to maintain such tramway or work the same with

advantage to the public, the Local Government may, by order, declare that the powers of the promoters shall, at the expiration of six calendar months from the making of the order, be at an end, and the powers of the promoters shall cease and determine at the expiration of the said period, unless the same are purchased by the local authority in manner by this Act provided. and thereupon the engineer or other officer appointed on that behalf by the Local Government may remove the tramway in like manner, and subject to the same provisions as to the payment of the costs of such removal, and to the same remedy for the recovery of such costs in every respect, as in cases of removal under the last preceding section.

*Purchase of Tramways.*

41. The local authority shall have the right of purchasing the tramway, with the plant, buildings, stores, rolling-stock, and everything connected therewith, upon the expiration of twenty-one years from the date of the order of the Local Government authorising the construction of such tramway, upon declaring its intention so to do in writing not less than six months before the expiration of the said twenty-one years, and shall have a renewed right of purchase at the end of every seven years after the expiration of the said twenty-one years, upon similar notice being given; and the value to be placed upon the tramway shall be calculated in a manner to be settled in the agreement entered into between the promoters and the said local authority and set forth in the order of the Local Government:

Provided that the promoters and the local authority may, with the consent of the Local Government, provide in the said agreement for the sale and purchase of the tramway on the expiration of any shorter periods than those herebefore specified.

The term '*Promoters*' is defined in section 3

This section is taken from section 36 of the Calcutta Act.

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